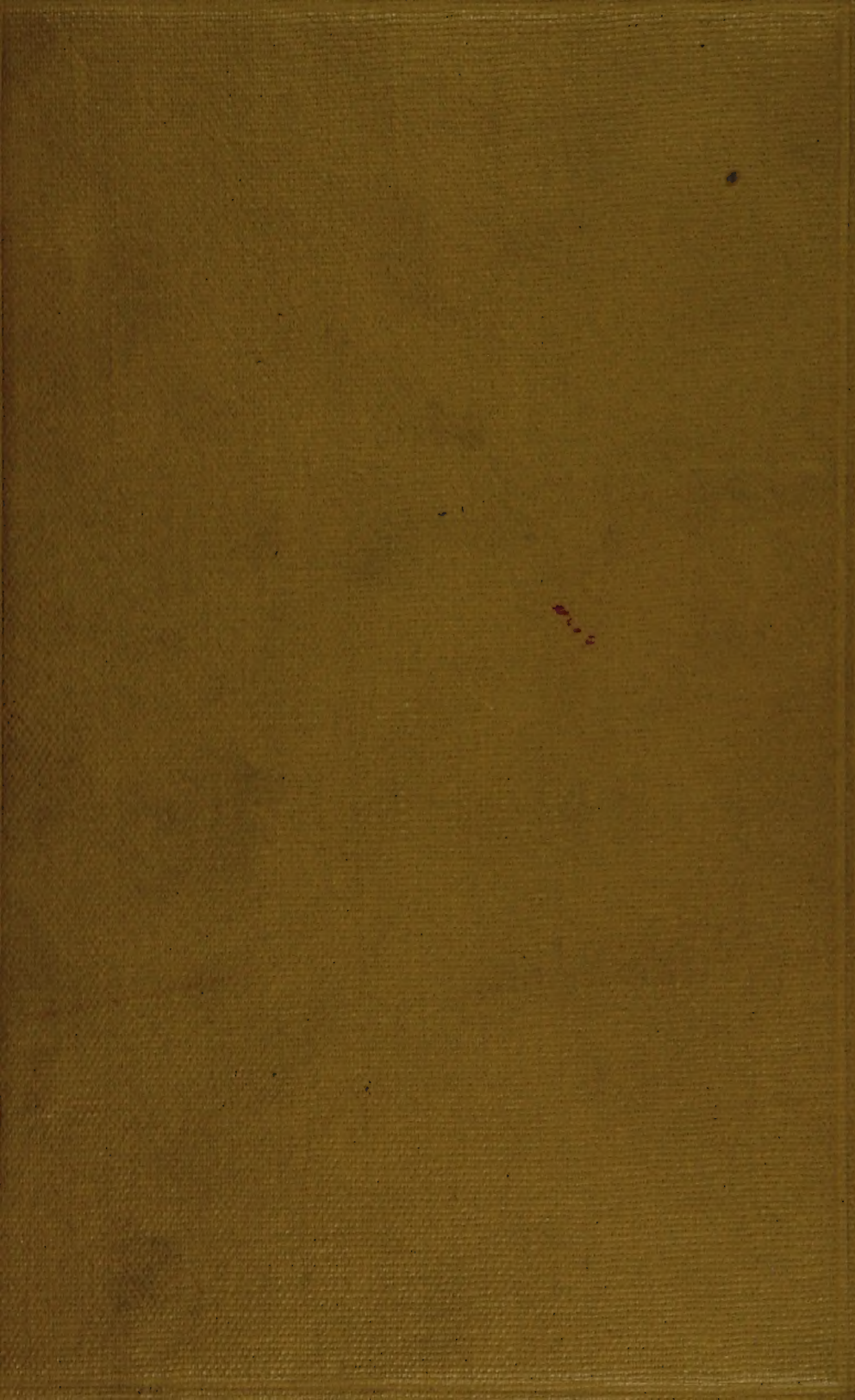
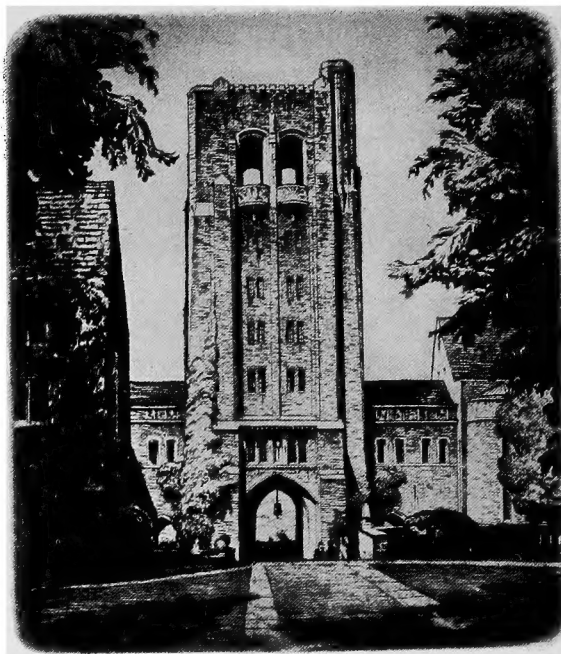




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A TREATISE
ON THE
AMERICAN AND ENGLISH
WORKMEN'S COMPENSATION LAWS

AS INTERPRETED BY THE COURTS AND TRIBUNALS
VESTED WITH THE POWER OF ADMINIS-
TERING AND ENFORCING SAME

By ARTHUR B. HONNOLD
OF THE MINNESOTA BAR
AUTHOR OF A TREATISE ON OKLAHOMA JUSTICE PRACTICE

IN TWO VOLUMES
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THE STATE REPORTS ARE CITED BY THEIR FAMILIAR ABBREVIATIONS

A. C.	Law Reports, Appeal Cases (1891 et seq., Eng.).
Am. St. Rep.	American State Reports.
Ann. Cas.	American Annotated Cases.
Ann. Rep. Kan. B. of L.	Annual Report of the Kansas Bureau of Labor.
Ann. Rep. Neb. St. Dept. of L.	Annual Report of the Nebraska State Department of Labor.
App. C.	Law Reports, Appeal Cases (Eng.).
App. Div.	Appellate Division (N. Y.).
Ariz. Op. Atty. Gen.	Opinions of the Attorney General of Arizona.
Atl.	Atlantic Reporter.
Bulletin, Ill.	Bulletin of Decisions of the Industrial Board of Illinois.
Bul. Ohio Indus. Com.	Bulletins of Decisions of the Industrial Commission of Ohio.
Bul. Wis. Indus. Com.	Bulletins of Decisions of the Industrial Commission of Wisconsin.
B. W. C. C.	Butterworth's Workmen's Compensation Cases (British cases).
Cal. I. A. C. Dec.	Decisions of the Industrial Accident Commission of Cal- ifornia (published first in bulletins and afterwards in bound volumes; page references to volumes 2 and 3 are to the bulletins).
Col. Indus. Com.	Industrial Commission of Colorado.
Conn. Comp. Dec.	Connecticut Compensation Decisions.
C. C. A.	U. S. Circuit Court of Appeals.
Cranch.	Cranch, U. S. Supreme Court Reports.
Det. Leg. News	Detroit Legal News.
Eng. Com. B.	English Common Bench Reports.
F.	Court of Sessions, Scotland (Fourth Series).
Fed.	Federal Reporter.
Gray	Gray, Massachusetts Reports.
I. A. C. Dec.	See Cal. I. A. C. Dec.
Ill. App.	Illinois Appellate Court Reports.
Ind. Indus. Bd.	Industrial Board of Indiana.
Iowa Op. Sp. Counsel to Indus. Com.	Opinions of the Special Counsel to the Iowa Industrial Commissioner.
I. R.	Irish Reports.
Ir. L. T.	Irish Law Times.
Ir. L. T. R.	Irish Law Times Reports.
Ir. R.	Irish Reports.
Kan. Ann. Rep. B. of L.	Annual Report of the Kansas Bureau of Labor.
K. B.	King's Bench.

- L. Ed.** Lawyers' Edition U. S. Supreme Court Reports.
L. J. K. B. Law Journal King's Bench.
L. R. A. Lawyers' Reports Annotated.
L. R. A. (N. S.) Lawyers' Reports Annotated, New Series.
L. T. Law Times (British cases).
L. T. Jo. Law Times Journal (British cases).
L. T. R. Law Times Reports (British cases).
Mass. Wk. Comp. Cases. .. Reports of Cases under the Workmen's Compensation Act of Massachusetts.
Me. Indus. Acc. Com. ... Industrial Accident Commission of Maine.
Mich. Wk. Comp. Cases. .. Decisions of the Industrial Accident Board of Michigan.
Minn. Op. Atty. Gen. Opinions of the Attorney General of Minnesota.
Minn. Op. Dept. of L. ... Opinions of the Department of Labor of Minnesota.
Misc. Rep. Miscellaneous Reports (N. Y.).
Mont. Indus. Acc. Bd. ... Industrial Accident Board of Montana.
Md. St. Indus. Acc. Com. .. State Industrial Accident Commission of Maryland.
N. C. C. A. Negligence and Compensation Cases Annotated.
N. E. Northeastern Reporter.
Neb. Ann. Rep. of St. Dept. of L. Annual Report of the Nebraska State Department of Labor.
Nev. Rep. Indus. Com. .. Report of the Industrial Commission of Nevada.
N. J. Law New Jersey Law Reports.
N. W. Northwestern Reporter.
N. Y. St. Dep. Rep. New York State Department Reports.
Okl. St. Indus. Com. State Industrial Commission of Oklahoma.
Op. Atty. Gen. Opinions of the Attorney General of the United States.
Op. Atty. Gen. Minn. ... Opinions of the Attorney General of Minnesota.
Op. Atty. Gen. Wash. ... Opinions of the Attorney General of the State of Washington.
Op. Compt. of T. Opinions of the Comptroller of the United States Treasury.
Op. Dept. of L., Minn. ... Opinions of the Department of Labor of Minnesota.
Op. Mich. Indus. Acc. Bd. .. Opinions of the Michigan Industrial Accident Board.
Op. Sol. Dept. of Labor. .. Opinions of Solicitor United States Department of Labor from August, 1908, to April, 1915.
Op. Sp. Counsel to Iowa Indus. Com. Opinions of the Special Counsel to the Iowa Industrial Commissioner.
Or. Rep. Indus. Acc. Com. Reports of the Industrial Accident Commission of Oregon.
Pac. Pacific Reporter.
Pa. St. Wk. Ins. Bd. State Workmen's Insurance Board of Pennsylvania.
Pa. Wk. Comp. Bd. Workmen's Compensation Board of Pennsylvania.
Q. B. Queen's Bench.
Q. B. D. Law Reports, Queen's Bench Division (1876-90).
Rep. Indus. Acc. Com. Or. .. Reports of the Industrial Accident Commission of Oregon.
Rep. Indus. Com. Nev. .. Report of the Industrial Commission of Nevada.
Rep. Wis. Indus. Com. ... Reports of the Wisconsin Industrial Commission.
Rul. Wash. Indus. Acc. Ins. Com. Rulings of the Industrial Accident Insurance Commission of the State of Washington.
S. E. Southeastern Reporter.
S. C. Session Cases.
S. L. R. Scottish Law Reports.
So. Southern Reporter.
Stone's W. C. A. Ins. Cas. Stone's Workmen's Compensation and Accident Insurance Cases (British cases).
Sup. Ct. United States Supreme Court Reporter.

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S. W.	Southwestern Reporter.
Tex. Civ. App.	Reports of Opinions of the Courts of Civil Appeals of Texas.
Tex. Emp'rs' Ins. Assoc.	Employers' Insurance Association of Texas.
Tex. Indus. Acc. Bd.	Industrial Accident Board of Texas.
The Bulletin	A magazine issued monthly by the New York State Industrial Commission.
T. L. R.	Time Law Reports (British cases).
U. S.	United States Supreme Court Reports.
Vt. Indus. Acc. Bd.	Industrial Accident Board of Vermont.
Wall.	Wallace, United States Supreme Court Reports.
Wash. Op. Atty. Gen....	Opinions of the Attorney General of the State of Washington.
Wash. Rul. Indus. Acc. Ins. Com.	Rulings of the Industrial Accident Insurance Commission of the State of Washington.
W. C. C.	Workmen Compensation Cases (British cases).
W. C. & Ins. Rep.	Workmen's Compensation and Insurance Reports (British cases).
W. C. R.	Workmen's Compensation Reports (British cases).
Wk. Comp. Act	Workmen's Compensation Act.
W. Va. St. Comp. Com...	State Compensation Commissioner of West Virginia.

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WORKMAN'S COMPULSORY COMPENSATION LAW

(*Laws 1st Sp. Sess. 1912, c. 14; Rev. St. 1913, p. 1054.*)

§ 1. Name of Act.—This chapter is a Workman's Compulsory Compensation Law as provided in Sec. 8, of Article XVIII of the State Constitution.

§ 2. Compulsory compensation—Incidents of liability.—Compulsory compensation shall be paid by his employer to any workman engaged in any employment declared and determined as in the next section hereof (as provided in Sec. 8, of Article XVIII of the State Constitution) to be especially dangerous, whether said employer be a person, firm, association, company, or corporation, if in the course of the employment of said employé personal injury thereto from any accident arising out of, and in the course of, such employment is caused in whole, or in part, or is contributed to, by a necessary risk or danger of such employment, or a necessary risk or danger inherent in the nature thereof, or by failure of such employer, or any of his or its officers, agents, or employé or employées, to exercise due care, or to comply with any law affecting such employment.

§ 3. Enumeration of dangerous employments.—The employments hereby declared and determined to be especially dangerous (as provided in Sec. 8, of Article XVIII of the State Constitution) within the meaning of this chapter are as follows:

1. The operation of steam railroads, electrical railroads, street railroads, by locomotives, engines, trains, motors, or cars of any kind propelled by a steam, electricity, cable or other mechanical power, including the construction, use or repair of machinery, plants, tracks, switches, bridges, roadbeds, upon, over, and by which such railway business is operated.

2. All work when making, using or necessitating dangerous proximity to gunpowder, blasting powder, dynamite, compressed air, or any other explosive.

3. The erection or demolition of any bridge, building, or structure in which there is, or in which the plans and specifications require, iron or steel frame work.

4. The operation of all elevators, elevating machinery or derricks or hoisting apparatus used within or on the outside of any bridge, building or other structure for conveying materials in connection with the erection or demolition of such bridge, building, or other structure.

5. All work on ladders or scaffolds of any kind elevated twenty (20) feet or more above the ground or floor beneath in the erection, construction, repair, painting or alteration of any building, bridge, structure or other work in which the same are used.

6. All work of construction, operation, alteration or repair, where wires, cables, switchboards, or other apparatus or machinery are in use charged with electrical current.

7. All work in the construction, alteration or repair of pole lines for telegraph, telephone or other purposes.

8. All work in mines; and all work in quarries.

9. All works in the construction and repair of tunnels, sub-ways and via ducts.

10. All work in mills, shops, works, yards, plants, and factories where steam, electricity, or any other mechanical power is used to operate machinery and appliances in and about such premises.

§ 4. **Option of employé or representative.**—In case such employé or his personal representative shall refuse to settle for such compensation (as provided in Sec. 8, of Article XVIII of the State Constitution), and chooses to retain the right to sue said employer (as provided in any law provided for in Sec. 7, Article XVIII of the State Constitution) he may so refuse to settle and may retain said right.

§ 5. **Declaration of public policy.**—Theory of compensation. It is hereby declared and determined to be contrary to public policy that any employer conducting any especially dangerous industry, through any of his or its officers, agents, or employé or employées, shall fail to exercise due care, or fail to comply with any law affecting such employment, in such manner as to endanger the lives and safety of employées thereof, without assuming the burden of the financial loss through disability entailed upon such employées, or their dependents, through such failure; and it is further declared and determined to be contrary to public policy that the burden of the financial loss to employées in such dangerous employments, or to their dependents, due to injuries to such employées received through such accidents as are hereinbefore mentioned shall be borne by said employées without due compensation paid to said employées, or their dependents, by the employer conducting such employment, owing to the inability of said employées to secure employment in said employments under a free contract as to the conditions under which they will work.

§ 6. **Liability without fault.**—The common law doctrine of no liability without fault is hereby declared and determined to be abrogated in Arizona as far as it shall be sought to be applied to the accidents hereinbefore mentioned.

§ 7. **Circumstances under which compensation becomes due.**—When, in the course of work in any of the employments described in the third section above, personal injury by accident arising out of and in the course of such labor, service, or employment, is caused to or suffered by any workman engaged therein, by any risk or failure specified in the section second hereof, then such employer shall be liable to and must make and pay compensation to the workman injured, and his personal representative, when death ensues, for the benefit of the estate of the deceased, for such injury at the rates and in the manner hereinafter set out in this Chapter:

Provided, That the employer shall not be liable under this Chapter in respect of any injury which does not disable the workman for a period of at least two weeks after the date of the accident from earning full wages at the work at which he was employed, at the time of the injury, and

Provided, Further, that the employer shall not be liable under this Chapter in case the employé refuses to settle for such compensation and retains his right to sue as provided in the fourth section of this Chapter.

§ 8. **Schedule.**—When an injury is received by a workman engaged in any labor or service specified in the third section of this Chapter, and for which the employer is made liable as specified in the seventh section hereof, then the measure and amount of compensation to be made by the employer to such workman or his personal representative for such injuries, shall be as follows:

1. If the injury by accident does not result in death within six months from the date of the accident, but does produce or result in total incapacity of the workman for work at any gainful employment for more than two (2) weeks after the accident then the compensation to be made to such workman by his employer shall be a semi-monthly payment commencing from the date of the accident, and continuing during such total incapacity, of a sum equal to fifty (50) per centum of the workman's average semi-monthly earnings when at work on full time during the preceding year, if he shall have been in the employment of such employer for such length of time; but if not for a full year, then fifty (50) per centum of the average wages, whether semi-monthly, weekly, or daily, being earned by such workman during the time he was at work for his employer before and at the time of the accident.

2. In case (1) the accident does not wholly incapacitate the workman from the same or other gainful employment; or (2) in case the workman, being at first wholly incapacitated, thereafter recovers so as to be able to engage at labor in the same or other gainful employment, thereby earning wages then in each case the amount of the semi-monthly payment shall be one-half of the difference between the average earnings of the workman at the time of the accident determined as above provided, and the average amount he is earning, or is capable of earning, thereafter, semi-monthly in the same or other employment—it being the intent and purpose of this Chapter, that the semi-monthly payments shall not exceed, but equal, from time to time one-half the difference between the amount of average earnings ascertained as aforesaid at the time of the accident, and the average amount which the workman is earning, or is capable of earning, after the accident and at the time of such semi-monthly payment. Said payments shall cease upon the workman recovering and earning, or being capable of earning, in the same or other gainful employment or otherwise, wages equal to the amount being earned at the time of the accident.

Provided, However, that the payments shall continue to be made as herein determined to the workman so long as incapacity to earn wages in the same or other employment continues, but in no case shall the total amount of such payments as provided in sub-sections 1 and 2 of this section exceed four thousand (\$4000.00) Dollars.

3. When the death of the workman results from the accident within six months thereafter, and the workman, at the time of his death, leaves a widow, and a minor child, or children, dependent on such workman's earnings for support and education, then the employer shall pay to the personal representative of the deceased workman for the exclusive benefit of such widow and child, or children, a sum equal to twenty-four hundred times one-half the daily wages or earnings of the deceased, determined as aforesaid, but in no event more than the sum of four thousand dollars (\$4000.00). Such sum shall be paid in lump and held in trust by such representative for such widow and children and applied by him to the support of the widow while she remains unmarried, and to the support and education of the children so long as necessary, and until eighteen (18) years of age, in such way and manner as to him shall seem best and just, under and in accordance with the directions of the court having jurisdiction of the estate of the decedent; any balance remaining unapplied at the closing of the estate of the decedent shall be distributed to the decedent's widow (if still his widow), and the children or next of kin,

as provided by the law of descents. The personal representative may pay out of said fund the reasonable and necessary expenses of medical attendance and burial of the decedent. If the workman leaves no widow or child, or children, but a father or mother or sister dependent on him for support, then said sum shall be for their benefit to be applied as above provided. If the deceased workman leaves no widow, children, or other dependents, then the employer shall pay the reasonable expenses of medical attendance upon the decedent and also provide and secure his burial in a proper cemetery, which may be chosen by the friends of the decedent.

§ 9. Medical examination.—Any workman claiming compensation under the provisions of this chapter shall, if requested by the employer, or upon written notice by him given to the employer, submit himself for bodily examination by some competent licensed medical practitioner or surgeon of the county in which the workman then resides, to ascertain and determine the nature, character, extent, and effect of the injury to such workman at the time of such examination for the purpose of ascertaining the semi-monthly compensation then and thereafter to be made. The employer or the workman not having requested the examination may have present at the examination a medical representative by him chosen. Each party shall pay his chosen representative the expenses of such examination. The said notice shall be given at least ten (10) days before the date fixed for the examination, and the place shall be convenient for the workman to be examined. In case the employer is a corporation, the notice may be served on any officer or agent thereof in the said county, and if none there, then elsewhere in the State. The examiner shall make a verified report in writing in duplicate within ten (10) days after the examination and furnish one copy to the employer and one to the workman. If any workman neglects or refuses to submit to an examination, his rights to compensation, if any, shall be suspended until he notifies the employer in writing of his readiness to submit thereto. No persons other than the physicians and surgeons aforesaid shall attend any examination except by agreement of the parties. If the employer and the workman each have an examiner and they shall agree upon and join in a report, the same shall be conclusive so long as it remains in force. If either the employer or the employé, having opportunity, fails to provide an examiner, then the report of the examiner making such examination shall likewise be conclusive so long as the same remains in force. If the workman and the employer each have an examiner present, and they disagree as to the nature, character, extent, or effect of the injury, and the degree of incapacity, if any, for labor on the part of the workman at the time of such examination, then they shall join in a written report stating the matters in which they agree, and in which they disagree, and mutually select some disinterested medical practitioner or surgeon of the county to whom the same shall be referred, and who shall proceed promptly to make an examination of the workman as to the matters in disagreement, and the same shall be conclusive so long as such report remains in force, which report shall be made by such disinterested examiner and verified, and a copy thereof furnished to the employer and the workman. For making such examination, such examiner shall be entitled to a fee of Ten Dollars (\$10.00) to be paid one-half by the employer and one-half by the workman at the time of such examination. Such examination may be required by the workman or the employer at periods not shorter than three

months from the date of the last examination. The report of any examination shall supersede all previous reports. When there is disagreement between the examiners aforesaid, and they cannot agree upon a third person as above provided, then it shall be the duty of the Chairman of the Board of Supervisors of the County, on written notice of either the workman or employer, to appoint some licensed medical practitioner or surgeon, who shall be a resident of the county, to make such examination, and said appointee shall be entitled to the same compensation.

§ 10. Notice of injury.—Every workman seeking compensation under the provisions of this chapter, where the same is not fatal or does not render him incompetent to give the notice, shall, within two weeks after the day of the accident, give notice in writing to the employer, or his representative employing such workman, or to the foreman or other employé of the employer under whom he was working at the time of the accident, and before the workman has voluntarily left the service of the employer and during his disability. The notice shall state (1) the name and address of such workman, (2) the date and place of the accident, (3) and state in simple words the cause thereof, (4) the nature and degree of the injury sustained, (5) and that compensation is claimed under this chapter. The notice may be written and served personally by the workman or by anyone in his behalf or any persons named above in this section, or by mail, postpaid, to such person, addressed to the office, place of business or residence of the person notified. No want or defect or inaccuracy of the notice shall be a bar to the right of the workman to claim and receive compensation under this chapter, or to maintain any proceeding to secure the same, unless the employer proves that he has been seriously prejudiced by such lack of notice. No compensation shall be claimed or allowed so long as such notice is not given. If the workman is killed, or otherwise rendered incompetent to give the notice, the same is not hereby required, nor is any notice required to be given by the personal representative of such deceased person. It shall be the duty of anyone giving a notice as in this section provided, to mail a duplicate copy to the Attorney General of this State.

§ 11. Settlement of controversies.—Any question which may arise between the employer and the workman or his personal representative, under this chapter, shall be determined either (1) by written agreement between the parties, or (2) by arbitration, or (3) by reference and submission to the Attorney General of this State; and in case of a refusal or failure of the employer and workman, or such personal representative, to agree upon a settlement by either of the modes above provided, then by a civil action at law, showing such refusal or failure as a reason for suit. If any employer fails to make or pay compensation, as in this chapter provided, for a period of three months after the date of the accident, or for any two months or more after the payment of the last monthly compensation, then the injured workman, if surviving, or the personal representative, in case of death, may bring an action in any court of competent jurisdiction to recover and enforce the compensation herein provided. Such action shall be conducted as near as may be in the same manner as other civil actions at law. The action shall be brought within one year after the happening of the accident, or after the non-payment of any semi-monthly installment theretofore fixed by agreement or otherwise; or within one year after the appointment of a personal representative of the decedent. The judgment in such action, when in favor of the plaintiff, shall

be for a sum equal to the amount of payments then due and prospectively due under the provisions of this chapter. The judgment shall be for the total amount thereof and collectible without relief from valuation or appraisal laws. And the court awarding the judgment shall, by proper order, direct that the same shall be paid ratably to the workman, if living, in semi-monthly installments until the determination of the periods provided in this chapter, the same as if such payments were being made voluntarily or without suit in conformity with this chapter. The judgment by agreement, if it appears to the court to be for the best interests of the workman, may be paid in lump and not otherwise. The court rendering the judgment is hereby given power from time to time to make such orders touching the matter of payments as may appear best to provide for the maintenance and support of the workman and his family during his infirmity and for his and their benefit and security. The employer shall have the right to stay the judgment in whole, whether the same is to be paid in lump sum or monthly installments, upon securing the same by one or more freehold sureties or a surety company, to be approved by the court rendering the judgment, who shall enter into a recognizance acknowledging themselves bound for the defendant for the payment of the judgment in lump or in partial payments as the same is, or shall be made, payable, together with interest and costs. On failure of any one or more of such payments by the employer, execution shall issue out of said court and cause, against such defendant, and his bail from time to time leviable and collectible without relief from valuation or appraisal or stay laws. The recognizance shall be written upon the order book of the court and immediately following the entry of the judgment and signed by each bail and docketed in the judgment docket of the court against such defendant and bailors, which shall bind the property of the same, in the same manner as the judgment binds the property of the employer. In an action by a personal representative of a deceased workman, the court shall determine the proportions of the judgment, whether in lump or in installments, to be distributed between the widow and child, or children, with power to alter and amend the proportionment from time to time on petition of any party interested as the court may deem best for the support, maintenance, and education of such widow and children.

If in any action under this chapter the court shall fix and allow, at the time of entering the judgment against the employer, a reasonable fee to the workman's attorney, to be taxed against the employer as costs, and collectible in the same manner. From such allowance there shall be no right of appeal. Such attorney shall have no claim for compensation upon the judgment or its proceeds, other than as herein provided. But no allowance or any fee payable by the workman to an attorney for services, or any fee payable by the workman to an attorney for services in securing a recovery or disbursement, shall ever exceed twenty-five (25) per centum of the principal of the sum recovered; and the same shall not be made a lien on the recovery of its proceeds, except as may be determined and allowed and fixed by the court.

§ 12. Compensation claims—Priority—Assignability—Exemption.—Any workman entitled to monthly or other payments from or to any judgment against any employer as above provided, as compensation shall have the same preferential claim therefor against the property and assets of the employer and any bailor, as now is allowed by law for unpaid wages or personal services. No judgment or any part thereof, nor monthly payments due, or becom-

ing due, under this chapter shall be assignable by the workman or subject to mortgage, levy, execution, or attachment. But the same shall stand as a continuing provision for the maintenance and support of such injured workman during his incapacity for periods provided in this chapter.

§ 13. Guardian of workman—Limitations.—In case any injured workman, having a right of action under the provisions of this chapter, shall be mentally incompetent at the time when any right or privilege accrues thereunder to him, a guardian may be appointed by any court having jurisdiction, to secure and protect the rights of such workman; and the guardian may claim and exercise any and all of such rights or privileges with the same force and effect as if the workman himself had been competent and had claimed or exercised any such right or privilege; and no limitation of time provided in any of the foregoing sections shall run so long as said incompetent workman has no guardian.

§ 14. Construction and operation of Act—Binding effect—Disaffirmance—Other remedies—Election.—This chapter shall be construed as a continuation of the law contained in chapter XIV of the laws of the First Legislature of the State of Arizona, Second Session. All workmen employed by an employer at manual and mechanical labor of the kinds defined in the third section of this chapter shall be deemed and held in law to be employed and working subject to the provisions of this chapter, and the employer and the workman shall alike be bound by and shall have each and every benefit and right given in this chapter the same as if a mutual contract to that effect were entered into between the employer and the workman at any time before the happening of any accident. It shall be lawful, however, for the employer and workman to disaffirm an employment under the provisions of this chapter by written contract between them or by written notice by one to and served upon the other to that effect before the day of the accident;

Provided, such written contract does not provide for less compensation than as provided in this chapter, And in the absence of such written contract or written notice, served as above provided, it shall be taken and held that the employment and service is under this chapter; and the same shall be the sole measure of their respective rights and liabilities when and as provided in this chapter;

Provided, If, after the accident, either the employer or the workman shall refuse to make or accept compensation under this chapter or to proceed under or rely upon the provisions hereof for relief, then the other may pursue his remedy or make his defense under other existing statutes, the state constitution, or the common law, except as herein provided, as his rights may at the time exist. Any suit brought by the workman for a recovery shall be held as an election to pursue such remedy exclusively.

§ 15. Agreement to come under Act.—Any employer employing workmen to perform labor or services of other kinds than as defined in this chapter, and such workmen and employés may, by agreement, at any time during the employment, accept and adopt the provisions of this chapter as to liability for accident, compensation, and the methods and means of paying and securing and enforcing the same. And in every such case the provisions of this chapter shall be taken in law and fact to bind the parties as fully as if they were specifically mentioned and embraced in the provisions of this chapter.

§ 16. Construction and application of Act—Apportionment of compensation.—This chapter is remedial in its purpose and shall be construed and applied so as to secure promptly and without burdensome expense to the workman the compensation herein provided and apportioned so as to provide support during the periods named for the loss of ability to earn full wages.

§ 17. Repealing and concluding sections.—Nothing in this chapter shall be deemed or taken to repeal in any way any other Acts or laws passed by the First Legislature of the State of Arizona, and in so far as it refers to the same subject in other acts it shall be deemed to be accumulative only.

EMPLOYERS' LIABILITY LAW

(Laws Reg. Sess. 1912, c. 89; Rev. St. 1913, p. 1051.)

§ 1. Name of Act.—This chapter is and shall be declared to be an Employer's Liability Law as prescribed in Sec. 7, of Article XVIII of the State Constitution.

§ 2. Liability for accident.—That to protect the safety of employes in all hazardous occupations in mining, smelting, manufacturing, railroad, or street railway, transportation, or any other industry, as provided in said Sec. 7, of Article XVIII of the State Constitution, any employer, whether individual, association, or corporation, shall be liable for the death or injury, caused by any accident due to a condition or conditions of such occupation, of any employe in the service of such employer in such hazardous occupation, in all cases in which such death or injury shall not have been caused by the negligence of the employe killed or injured.

§ 3. Declaration of hazardous occupations.—The labor and services of workmen at manual and mechanical labor, in the employment of any person, firm, association, company, or corporation, in the occupations enumerated in the next section hereof are hereby declared and determined to be service in a hazardous occupation within the meaning of the terms of the preceding section.

By reason of the nature and conditions of, and the means used and provided for doing the work in, said occupations, such service is especially dangerous and hazardous to the workmen therein, because of risks and hazards which are inherent in such occupations and which are unavoidable by the workmen therein.

§ 4. Enumeration of hazardous employments.—The occupations hereby declared and determined to be hazardous within the meaning of this chapter are as follows:

1. The operation of steam railroads, electrical railroads, street railroads, by locomotives, engines, trains, motors, or cars of any kind propelled by steam, electricity, cable or other mechanical power, including the construction, use or repair of machinery, plants, tracks, switches, bridges, roadbeds, upon, over, and by which such railway business is operated.

2. All work when making, using or necessitating dangerous proximity to gunpowder, blasting powder, dynamite, compressed air, or any other explosive.

3. The erection or demolition of any bridge, building, or structure in which there is, or in which the plans and specifications require, iron or steel frame work.

4. The operation of all elevators, elevating machines or derricks or hoisting apparatus used within or on the outside of any bridge, building or other structure for conveying materials in connection with the erection or demolition of such bridge, building, or structure.

5. All work on ladders or scaffolds of any kind elevated twenty (20) feet or more above the ground or floor beneath in the erection, construction, repair, painting or alteration of any building, bridge, structure or other work in which the same are used.

6. All work of construction, operation, alteration or repair where wires, cables, switchboards, or other apparatus or machinery are in use charged with electrical current.

7. All work in the construction, alteration, or repair of pole lines for telegraph, telephone or other purposes.

8. All work in or about quarries, open pits, open cuts, mines, ore reduction works and smelters.

9. All work in the construction and repair of tunnels, sub-ways and viaducts.

10. All works in mills, shops, works, yards, plants, and factories where steam, electricity, or any other mechanical power is used to operate machinery and appliances in and about such premises.

§ 5. **Safety rules.**—Every employer, whether individual, firm, association, company, or corporation, employing workmen in such occupation, of itself or through an agent, shall by rules, regulations, or instructions, inform all employés in such occupations as to the duties and restrictions of their employment, to the end of protecting the safety of employés in such employment.

§ 6. **Circumstances of liability.**—To whom damages payable. When in the course of work in any of the employments or occupations enumerated in the preceding section personal injury or death by any accident arising out of and in the course of such labor, service and employment, and due to a condition or conditions of such occupations or employment, is caused to or suffered by any workman engaged therein, in all cases in which such injury or death of such employé shall not have been caused by the negligence of the employé killed or injured, then the employer of such employé shall be liable in damages to employé injured, or, in case death ensues, to the personal representative of the deceased for the benefit of the surviving widow or husband and children of such employé; and, if none, then to such employé's parents; and, if none, then to the next of kin dependent upon such employé, and, if none then to his personal representative, for the benefit of the estate of the deceased.

§ 7. **Questions of fact—Contributory negligence.**—In all actions hereafter brought against any such employer under or by virtue of any of the provisions of this chapter to recover damages for personal injuries to any employé, or where such injuries have resulted in his death, the question whether the employé may have been guilty of contributory negligence, or has assumed the risk, shall be a question of fact and shall at all times, regardless of the state of the evidence relating thereto, be left to the jury, as provided in Sec. 5, of Article XVIII of the State Constitution; provided, however, that in all actions brought against any employer, under or by virtue of any of the provisions of this chapter to recover damages for personal injuries to an employé, or where such injuries have resulted in his death, the

fact that the employé may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employé.

§ 8. No contract exemption—Set-off.—That any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any employer to exempt himself or itself from any liability created by this chapter, shall to that extent be void; provided, that in any action brought against such employer under or by virtue of any of the provisions of this chapter, such employer may set off therein any sum it has contributed or paid to any insurance, relief, benefit, or indemnity or that it may have paid to the injured employé or his personal representative on account of the injury or death for which said action was brought.

§ 9. Interest on judgment.—In all actions for damages brought under the provisions of this chapter, if the plaintiff be successful in obtaining judgment; and if the defendant appeals to a higher court; and if the plaintiff in the lower court be again successful; and the judgment of the lower court is sustained by the higher court or courts; then, and in that event the plaintiff shall have added to the amount of such judgment by such higher court or courts, interest at the rate of 12 per cent per annum on the amount of such judgment from the date of the filing of the suit in the first instance until the full amount of such judgment is paid.

§ 10. Time limitation.—No action shall be maintained under this chapter unless commenced within two years from the day the cause of action accrued.

CALIFORNIA

WORKMEN'S COMPENSATION, INSURANCE AND SAFETY ACT

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WORKMEN'S COMPENSATION, INSURANCE AND SAFETY ACT

(Laws 1913, c. 176, amended by Laws 1915, cc. 541, 607, 662.)

§ 1. **Short title.**—This act shall be known, and may be cited, as the "workmen's compensation, insurance and safety act" and shall apply to the subjects mentioned in its title.

§ 2. **Terms defined.**—The following terms as used in this act shall, unless a different meaning is plainly required by the context, be construed as follows:

(1) "**Commission.**"—The term "commission" means the Industrial Accident Commission of the State of California.

(2) "**Commissioner.**"—The term "commissioner" means one of the members of the commission.

(3) "**Compensation.**"—The term "compensation" means compensation under this act and includes every benefit or payment conferred by sections twelve to

thirty-five, inclusive, of this act upon an injured employee, or in the event of his death, upon his dependents, without regard to negligence.

(4) "**Damages.**"—The term "damages" means the recovery allowed in an action at law as contrasted with compensation under this act.

(5) "**Person.**"—The term "person" includes an individual, firm, voluntary association or a corporation.

(6) "**Insurance carrier.**"—The term "insurance carrier" includes the state compensation insurance fund herein created and any private company, corporation, mutual association, reciprocal or inter-insurance exchange authorized under the laws of this state to insure employers against liability for compensation under this act.

(7) "**Compensation provisions.**"—The phrase "compensation provisions of this act" means and includes sections twelve to thirty-five, inclusive, of this act.

(8) "**Safety provisions.**"—The phrase "safety provisions of this act" means and includes sections fifty-one to seventy-two, inclusive, of this act.

(9) **Number and gender.**—Whenever in this act the singular is used the plural shall be included; where the masculine gender is used, the feminine and neuter shall be included.

INDUSTRIAL ACCIDENT COMMISSION

§ 3. Industrial Accident Commission created—Members—Term—Salary.—There is hereby created a board to consist of three members who shall be appointed by the governor from the state at large and which shall be known as the "Industrial Accident Commission" and shall have the powers, duties and functions hereinafter conferred. Within thirty days prior to the first day of January, 1914, the governor shall appoint the three members of said commission, one for the term of two years, one for the term of three years and one for the term of four years. Thereafter, the term of office of each commissioner shall be four years. Vacancies shall be filled by appointment in the same manner for the unexpired term. Each commissioner shall receive an annual salary of five thousand dollars. Each commissioner shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office.

§ 4. Organization of Commission—Delegation of power.—The commission shall organize by choosing one of its members as chairman. A majority of the commission shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power or authority of the commission. A vacancy on the commission shall not impair the right of the remaining members to perform all the duties and exercise all the power and authority of the commission. The act of the majority of the commission, when in session as a commission, shall be deemed to be the act of the commission, but any investigation, inquiry or hearing, which the commission has power to undertake or to hold, may be undertaken or held by or before any member thereof or any referee appointed by the commission for that purpose, and every finding, order, decision, or award made by any commissioner or referee, pursuant to such investigation, inquiry or hearing, when approved and confirmed by the commission and ordered filed in its office, shall be deemed to be the finding, order, decision or award of the commission.

§ 5. **Seal.**—The commission shall have a seal, bearing the following inscription: "Industrial Accident Commission State of California, seal." The seal shall be affixed to all writs and authentications of copies of records and to such other instruments as the commission shall direct. All courts shall take judicial notice of said seal.

§ 6. **Offices.**—The commission shall keep its principal office in the city and county of San Francisco, and shall also keep an office in the city of Los Angeles, and shall provide itself with suitable rooms, necessary office furniture, stationery and other supplies. For the purpose of holding sessions in other places, the commission shall have power to rent temporary quarters.

§ 7. **Assistants and employés.**—The commission shall have full power and authority:

(1) **Attorney.**—To appoint as its attorney an attorney-at-law of this state, who shall hold office at the pleasure of the commission. It shall be the right and the duty of the attorney to represent and appear for the people of the State of California and the commission in all actions and proceedings involving any question under this act or under any order or act of the commission and, if directed so to do by the commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence, prosecute and expedite the final determination of all actions or proceedings, civil or criminal, directed or authorized by the commission; to advise the commission and each member thereof, when so requested, in regard to all matters in connection with the jurisdiction, powers or duties of the commission and members thereof; and generally to perform all duties and services as attorney to the commission which may be required of him.

(2) **Secretary.**—To appoint, and it shall appoint, a secretary, who shall hold office at the pleasure of the commission. It shall be the duty of the secretary to keep a full and true record of all the proceedings of the commission, to issue all necessary processes, writs, warrants and notices which the commission is required or authorized to issue, and generally to perform such other duties as the commission may prescribe. The commission may also appoint such assistant secretaries as may be necessary and such assistant secretaries may perform any duty of the secretary, when so directed by the commission.

(3) **Manager of state compensation insurance fund—Bond.**—To appoint a manager of the state compensation insurance fund who shall hold office at the pleasure of the commission. It shall be the duty of such manager to manage, supervise and conduct, subject to the general direction and approval of the commission, the business and affairs of the state compensation insurance fund and to perform such other duties as the commission may prescribe. Before entering on the duties of his office, he must give an official bond in the sum of \$50,000, and take and subscribe to an official oath. Said bond must be approved by the commission, by written endorsement thereon, and be filed in the office of the secretary of state.

(4) **Superintendent of safety.**—To appoint a superintendent of the department of safety, who shall hold office at the pleasure of the commission and who shall perform such duties as the commission shall prescribe.

(5) **Other employés.**—To employ such other assistants, officers, experts, statisticians, actuaries, accountants, inspectors, referees and other employees,

as it may deem necessary to carry out the provisions of this act, or to perform the duties and exercise the powers conferred by law upon the commission.

§ 8. Salaries and expenses.—All officers and employees of the commission shall receive such compensation for their services as may be fixed by the commission and shall hold office at the pleasure of the commission and shall perform such duties as are imposed on them by law or by the commission. The salaries of the members of the commission, its attorney, secretary and assistant secretary, as fixed by law or the commission, shall be paid in the same manner as are the salaries of other state officers. The salary or compensation of every other person holding office or employment under the commission, as fixed by law or by the commission, shall be paid monthly, after being approved by the commission, upon claims therefor to be audited by the state board of control. All expenses incurred by the commission pursuant to the provisions of this act, including the actual and necessary traveling and other expenses and disbursements of the members thereof, its officers and employees, incurred while on business of the commission, either within or without the state, shall, unless otherwise provided in this act, be paid from the funds appropriated for the use of the commission, after being approved by the commission, upon claims therefor to be audited by the board of control; provided, however, that no such expenses incurred outside of the state shall be allowed unless prior authorization therefor be obtained from the board of control.

§ 9. Apportionment of expenses.—In all cases in which salaries, expenses or outgoings of one department under the jurisdiction of the commission are expended in whole or in part on behalf of another department the commission may apportion the same between such departments.

§ 10. Blank forms—Books of record.—The commission shall cause to be printed and furnished free of charge to any employer or employee, or other person, such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act; it shall provide a book in which shall be entered the minutes of all its proceedings, a book in which shall be recorded all awards made by the commission and such other books or records as it shall deem requisite for the proper and efficient administration of this act; all such records to be kept in the office of the commission.

§ 11. Powers of commission.—The commission shall also have power and authority:

(1) **Fees.**—To charge and collect the following fees: for copies of papers and records not required to be certified or otherwise authenticated by the commission, ten cents for each folio; for certified copies of official documents and orders filed in its office or of the evidence taken on proceedings had, fifteen cents for each folio.

(2) **Reports and pamphlets.**—To publish and distribute in its discretion from time to time, in addition to its annual report to the governor of the state, such further reports and pamphlets covering its operations, proceedings and matters relative to its work as it may deem advisable.

(3) To fix and collect reasonable charges for publications issued under its authority.

(4) **Fees paid into "industrial accident fund."**—The fees charged and collected under this section shall be paid monthly into the treasury of the state to the credit of the "industrial accident fund" and shall be accompanied by a detailed statement thereof.

COMPENSATION

§ 12. (a) **Circumstances under which compensation becomes due.**—Liability for the compensation provided by this act, in lieu of any other liability whatsoever to any person, shall, without regard to negligence, exist against an employer for any personal injury sustained by his employees arising out of and in the course of the employment and for the death of any such employee if the injury shall proximately cause death, in those cases where the following conditions of compensation concur:

(1) **When both employer and employé subject to Act.**—Where, at the time of the injury, both the employer and employee are subject to the compensation provisions of this act.

(2) **When employé is performing duty.**—Where, at the time of the injury, the employee is performing service growing out of and incidental to his employment and is acting within the course of his employment as such.

(3) **Not when injury is caused by intoxication or misconduct.**—Where the injury is proximately caused by the employment, either with or without negligence, and is not so caused by the intoxication or the wilful misconduct of the injured employee.

(b) **Compensation exclusive remedy unless employer grossly negligent.**—Where such conditions of compensation exist, the right to recover such compensation pursuant to the provisions of this act, shall be the exclusive remedy against the employer for the injury or death, except that when the injury was caused by the employer's gross negligence or wilful misconduct and such act or failure to act causing such injury was the personal act or failure to act on the part of the employer himself, or if the employer be a partnership on the part of one of the partners, or if a corporation, on the part of an elective officer or officers thereof, and such act or failure to act indicated a wilful disregard of the life, limb, or bodily safety of employees, any such injured employee may, at his option, either claim compensation under this act or maintain an action at law for damages.

If such action is commenced and at any time before judgment is withdrawn or dismissed and the injured employee or his dependents apply for compensation under this act, the commission shall allow the employer or insurance carrier, as a counter claim or set-off against any indemnity or death benefit awarded, the reasonable expense incurred in preparing for or making a defense against such suit for damages.

(c) **Liability for damages.**—In all other cases where the conditions of compensation do not concur, the liability of the employer shall be the same as if this act had not been passed.

§ 13. **"Employer" defined.**—The term "employer" as used in sections twelve to thirty-five, inclusive, of this act shall be construed to mean: The state, and each county, city and county, city, school district and all public corporations and quasi-public corporations therein, and every person, firm, voluntary association, and private corporation, (including any public service

corporation) who has any person in service under any appointment or contract of hire, or apprenticeship, express or implied, oral or written, and the legal representatives of any deceased employer.

§ 14. "Employé" defined.—The term "employee" as used in sections twelve to thirty-five, inclusive, of this act shall be construed to mean: Every person in the service of an employer as defined by section thirteen hereof under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens and also including minors, but excluding any person whose employment is both casual and not in the usual course of the trade, business, profession or occupation of his employer, and also excluding any employee engaged in farm, dairy, agricultural, viticultural or horticultural labor, in stock or poultry raising or in household domestic service, and also excluding any person holding an appointment as deputy clerk, deputy sheriff or deputy constable appointed for the convenience of such appointee and who receives no compensation from the county or municipal corporation or from the citizens thereof for services as such deputy.

SCALE OF COMPENSATION

§ 15. Schedule.—Where liability for compensation under this act exists such compensation shall be furnished or paid by the employer and be as provided in the following schedule:

(a) Medical treatment.—Such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members, as may reasonably be required at the time of the injury and within ninety days thereafter, unless such time is extended by the commission, to cure and relieve from the effects of the injury, the same to be provided by the employer, and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employee in providing the same.

(b) 1. Compensation, when payable.—If the injury causes disability, a disability indemnity which shall be payable for one week in advance as wages on the fifteenth day after the injured employee leaves work as a result of the injury, and thereafter on the employer's regular pay day, but not less frequently than twice in each calendar month, unless otherwise ordered by the commission, subject, however, to the following limitations:

(1) Disability less than two weeks.—If the period of disability does not last longer than two weeks from the day the employee leaves work as the result of the injury, no disability indemnity whatever shall be recoverable.

(2) Waiting period.—If the period of disability lasts longer than two weeks from the day the employee leaves work as the result of the injury, no disability indemnity shall be recoverable for the first two weeks of such disability.

2. Compensation for temporary disability.—The disability indemnity payable shall be as follows:

(1) If the injury causes temporary total disability, sixty-five per cent of the average weekly earnings during the period of such disability;

(2) If the injury causes temporary partial disability, sixty-five per cent of the weekly loss in wages during the period of such disability;

(3) If the temporary disability caused by the injury is at times total and at times partial the weekly disability indemnity during the periods of each

such total or partial disability shall be in accordance with paragraphs (1) and (2) of this subdivision respectively;

(4) Paragraphs (1), (2) and (3) of this subdivision shall be limited as follows: aggregate disability indemnity for a single injury causing temporary disability shall not exceed three times the average annual earnings of the employee, nor shall the aggregate disability period for such temporary disability in any event extend beyond two hundred forty weeks from the date of the injury.

(5) **Permanent disability.**—If the injury causes permanent disability, the percentage of disability to total disability shall be determined and the disability indemnity computed and allowed as follows: for a one per cent disability sixty-five per cent of the average weekly earnings for a period of four weeks; for a ten per cent disability, sixty-five per cent of the average weekly earnings for a period of forty weeks; for a twenty per cent disability, sixty-five per cent of the average weekly earnings for a period of eighty weeks; for a thirty per cent disability, sixty-five per cent of the average weekly earnings for a period of one hundred twenty weeks; for a forty per cent disability, sixty-five per cent of the average weekly earnings for a period of one hundred sixty weeks; for a fifty per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred weeks; for a sixty per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks; for a seventy per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks, and thereafter ten per cent of such weekly earnings during the remainder of life; for an eighty per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks and thereafter twenty per cent of such weekly earnings during the remainder of life; for a ninety per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks and thereafter thirty per cent of such weekly earnings during the remainder of life; for a hundred per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks and thereafter forty per cent of such weekly earnings during the remainder of life.

(6) **Intermediate compensation schedule.**—The indemnity for permanent disabilities intermediate to those fixed by the foregoing schedule shall be computed and allowed as follows: if under seventy per cent, sixty-five per cent of the average weekly earnings for four weeks for each one per cent of disability, if seventy per cent or over, sixty-five per cent of the average weekly earnings for two hundred forty weeks and thereafter one per cent of such weekly earnings for each one per cent of disability in excess of sixty per cent to be paid during the remainder of life.

(7) In determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee and his age at the time of such injury.

(8) **Illness not to limit compensation payable.**—Nothing contained in the foregoing schedule of permanent disability indemnity shall be held to limit the amount of compensation recoverable for any such permanent injury during any period of total incapacity resulting from that injury.

(9) **Permanent total disability presumed.**—The following permanent disabilities shall be conclusively presumed to be total in character: Loss of both eyes or the sight thereof; loss of both hands or the use thereof; and

injury resulting in a practically total paralysis; an injury to the brain resulting in incurable imbecility or insanity. In all other cases, permanent total disability shall be determined in accordance with the fact.

(10) The percentage of permanent disability caused by any injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any injury previously suffered or any permanent disability caused thereby.

3. Effect of death on liability.—The death of the injured employee shall not affect the liability of the employer under subsections (a) and (b) of this section, so far as such liability has accrued and become payable at the date of the death, and any accrued and unpaid compensation shall be paid to the dependents, if any, without administration, or if there are no dependents, to the personal representatives of the deceased employee or other person entitled thereto, but such death shall be deemed to be the termination of the disability.

(c) Death benefits.—If the injury causes death, either with or without disability, a death benefit which shall be payable in installments equal to sixty-five per cent of the average weekly earnings of the deceased employee, upon the employer's regular pay day, but not less frequently than twice in each calendar month, unless otherwise ordered by the commission, which death benefit shall be as follows:

(1) Wholly dependent.—In case the deceased employee leaves a person or persons wholly dependent upon him for support, the death benefit shall be a sum sufficient, when added to the disability indemnity which, at the time of death has accrued and become payable, under the provisions of subsection (b) hereof, including the reasonable expense of his burial, not exceeding one hundred dollars, to make the total disability indemnity, cost of burial and death benefit equal to three times his average annual earnings, such annual earnings to be taken at not less than three hundred and thirty-three dollars and thirty-three cents nor more than one thousand six hundred and sixty-six dollars and sixty-six cents.

(2) Partially dependent.—In case the deceased employee leaves no person wholly dependent upon him for support, but one or more persons partially dependent therefor, the death benefit shall be such percentage of three times such average annual earnings of the employee as the annual amount devoted by the deceased to the support of the person or persons so partially dependent bears to such average annual earnings; provided, that the death benefit shall not be greater than a sum sufficient, when added to the disability indemnity which, at the time of the death, has accrued and become payable under the provisions of subsection (b) hereof, together with the reasonable cost of the burial of such deceased employee, not exceeding one hundred dollars, to make the total disability indemnity, cost of burial and death benefit equal to three times his average annual earnings, such average annual earnings to be taken at not less than three hundred and thirty-three dollars and thirty-three cents nor more than one thousand six hundred and sixty-six dollars and sixty-six cents.

(3) When there are no dependents.—If the deceased employee leaves no person dependent upon him for support, the death benefit shall consist of the reasonable expenses of his burial not exceeding one hundred dollars and such further death benefit as may be provided by law.

(d) Payment, effect of.—Payment of compensation in accordance with the order and direction of the commission shall discharge the employer from all claims therefor.

§ 16. (a) Forfeiture of rights—Limitation periods.—Unless compensation is paid or an agreement for its payment made within the time limited in this section for the institution of proceedings for its collection, the right to institute such proceedings shall be wholly barred.

(b) Filing of claims.—The periods within which proceedings for the collection of compensation may be commenced are as follows:

(1) Proceedings for the collection of the benefit provided by subsection (a) of section fifteen or for the collection of the disability indemnity provided by subsection (b) of said section fifteen must be commenced within six months from the date of the injury, except as otherwise provided in this act.

(2) Proceedings for the collection of the death benefit provided by subsection (c) of said section fifteen must be commenced within one year from the date of death, and in any event within two hundred forty weeks from the date of the injury, and can only be maintained when it appears that death ensued within one year from the date of the injury, or that the injury causing death also caused disability which continued to the date of the death and for which a disability indemnity was paid, or an agreement for its payment made, or proceedings for its collection commenced within the time limited for the commencement of proceedings for the recovery of the disability indemnity.

(c) Extension of time.—The payment of the disability indemnity or death benefit, or any part thereof, or agreement therefor, shall have the effect of extending the period within which proceedings for its collection may be commenced, six months from the date of the agreement or last payment of such disability indemnity or death benefit or any part thereof; provided, however, that nothing contained in this section shall be construed to bar the right of any injured employee to institute proceedings for the collection of compensation within two hundred forty-five weeks after the date of the injury, upon the grounds that the original injury has caused further disability; and the jurisdiction of the commission, in such cases, shall be a continuing jurisdiction at all times within such period.

(d) Minors and defectives.—If an injured employee, or in the case of his death, one or more of his dependents, shall be under twenty-one years of age or incompetent at any time when any right or privilege accrues to such person under the provisions of this act, a general guardian, appointed by the court or a guardian ad litem or trustee appointed by the commission or a commissioner may, on behalf of any such person, claim and exercise any such right or privilege with the same force and effect as if no such disability existed; and no limitation of time provided by this act shall run against any such person under twenty-one years of age or incompetent unless and until such guardian or trustee is appointed.

(e) Effect of refusal of medical treatment.—No compensation shall be payable in respect of the death or disability of an employee if his death is caused, or if and so far as his disability is caused, continued, or aggravated, by an unreasonable refusal to submit to medical treatment, or to any surgical treatment, the risk of which is, in the opinion of the commission, based upon expert medical or surgical advice, inconsiderable in view of the seriousness of the injury.

(f) Previous disability no bar.—The fact that an employee has suffered a previous disability, or receives compensation therefor, shall not preclude him from compensation for a later injury, or his dependents from compensation

for death resulting therefrom, but in determining compensation for the later injury, or death resulting therefrom, his average annual earnings shall be fixed at such sum as will reasonably represent his annual earning capacity at the time of the later injury.

(g) Payment during incapacity not admission of liability.—Any payment, allowance or benefit received by the injured employee during the period of his incapacity, or by his dependents in the event of his death, which by the terms of this act was not then due and payable or when there is any dispute or question concerning the right to compensation, shall not, in the absence of any agreement, be construed to be an admission of liability for compensation on the part of the employer, or the acceptance thereof as a waiver of any right or claim which the employee or his dependents may have against the employer, but any such payment, allowance or benefit may be taken into account by the commission in fixing the amount of the compensation to be paid.

§ 17. (a) Average weekly and annual earnings—Methods of computing.—The average weekly earnings referred to in section fifteen hereof shall be one fifty-second of the average annual earnings of the employee; in computing such earnings his average annual earnings shall be taken at not less than three hundred and thirty-three dollars and thirty-three cents, nor at more than one thousand six hundred and sixty-six dollars and sixty-six cents and between said limits shall be arrived at as follows:

(1) If the injured employee has worked in the same employment, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily earnings, wage or salary which he earned as such employee during the days when so employed.

(2) If the injured employee has not so worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of three hundred times the average daily earnings, wage or salary which an employee of the same class, working substantially the whole of such immediately preceding year, in the same or a similar kind of employment, in the same or a neighboring place, earned during the days when so employed.

(3) In every case where for any reason the foregoing methods of arriving at the average annual earnings of the injured employee can not reasonably and fairly be applied, such annual earnings shall be taken at such sum as shall reasonably represent the average annual earning capacity of the injured employee at the time of the injury in the kind of employment in which he was then working, or in any employment comparable therewith, but not of a higher class.

(b) Items included in estimate.—In determining such average weekly earnings, there shall be included the market value of board, lodging, fuel and other advantages received by the injured employee, as part of his remuneration and which can be estimated in money, but such average weekly earnings shall not include any sum which the employer paid to the injured employee to cover any special expenses entailed on him by the nature of his employment.

(c) Estimate in case of minor.—If the injured employee is under twenty-one years of age, and his incapacity, whether total or partial, is permanent, his average weekly earnings shall be deemed, within the limits fixed, to be the weekly sum, that under ordinary circumstances he would probably be able to

earn after attaining the age of twenty-one years, in the occupation in which he was employed at the time of the injury, or the occupation to which he would reasonably have been promoted, if he had not been injured.

§ 18. Weekly loss of wages.—The weekly loss in wages referred to in section fifteen hereof shall consist of the difference between the average weekly earnings of the injured employee, computed according to the provisions of said section, and the weekly amount which the injured employee, in the exercise of reasonable diligence, will probably be able to earn during the disability, to be determined in view of the nature and extent of the injury. In computing such probable earnings due regard shall be had to the ability of the injured employee to compete in an open labor market.

DEPENDENTS

§ 19. (a) Persons classed as wholly dependent.—The following shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(1) A wife upon a husband with whom she was living at the time of his death, or for whose support such husband was legally liable at the time of his death.

(2) A husband upon a wife upon whose earnings he is partially or wholly dependent at the time of her death.

(3) A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning) upon the parent with whom he or they are living at the time of the death of such parent or for whose maintenance such parent was legally liable at the time of his death, there being no surviving dependent parent.

(b) Dependency a question of fact.—In all other cases, questions of entire or partial dependency and questions as to who constitute dependents and the extent of their dependency shall be determined in accordance with the fact, as the fact may be at the time of the death of the employee.

(c) Who are not dependents.—No person shall be considered a dependent of any deceased employee unless a member of the family of such employee or unless such person bears to such employee the relation of husband or wife, child, adopted child or stepchild, father or mother, father-in-law or mother-in-law, grandfather or grandmother, brother or sister, uncle or aunt, brother-in-law or sister-in-law, nephew or niece.

(d) Death benefits.—To whom payable.—1. If there is one or more persons wholly dependent for support upon a deceased employee, such person or persons shall receive the entire death benefit, and any person or persons partially dependent shall receive no part thereof, unless otherwise ordered by the commission.

2. If there is more than one such person wholly dependent for support upon a deceased employee, the death benefit shall be divided equally among them, unless otherwise ordered by the commission.

3. If there is more than one person partially dependent for support upon a deceased employee, and no person wholly dependent for support, the amount allowed as the death benefit shall be divided among the persons so partially dependent in proportion to the relative extent of their dependency, unless otherwise ordered by the commission.

(e) **Commission to apportion payments.**—The death benefits shall be paid to such one or more of the dependents of the deceased, or to a trustee appointed by the commission, or a commissioner, for the benefit of the person or persons entitled, as may be determined by the commission, and the commission may, anything in this act contained to the contrary notwithstanding, apportion such benefits among the dependents in proportion to their respective needs and as may be just and equitable, and may order payment to a dependent subsequent in right, or not otherwise entitled, upon good cause being shown therefor. The person to whom the death benefit is paid for the use of the several beneficiaries shall apply the same in compliance with the findings and directions of the commission. In the event of the death of any dependent beneficiary of any deceased employee, the unpaid death benefit shall be apportioned to the surviving dependents of such deceased employee, if any, as the commission may direct, but if there be no surviving dependent of such deceased employee the death of such dependent shall terminate the death benefit which shall not survive to the estate of such deceased dependent, unless otherwise provided by law.

NOTICE OF INJURY

§ 20. **Notice to employer—Within thirty days—Exceptions.**—No claim to recover compensation under this act shall be maintained unless within thirty days after the occurrence of the injury which is claimed to have caused the disability or death, notice in writing, stating the name and the address of the person injured, the time and the place where the injury occurred, and the nature of the injury, and signed by the person injured or some one in his behalf, or in case of his death, by a dependent or some one in his behalf, shall be served upon the employer; provided, however, that actual knowledge of such injury on the part of such employer, or his managing agent or superintendent in charge of the work, upon which the injured employee was engaged at the time of the injury, shall be equivalent to such service; and provided, further, that the failure to give any such notice, or any defect or inaccuracy therein, shall not be a bar to recovery under this act if it is found as a fact in the proceedings for the collection of the claim that there was no intention to mislead or prejudice the employer, and that he was not in fact misled or prejudiced thereby.

EXAMINATION BY PHYSICIAN

§ 21. (a) **Medical examination.**—Whenever in case of injury the right to compensation under this act would exist in favor of any employee, he shall, upon the written request of his employer, submit from time to time to examination by a practicing physician, who shall be provided and paid for by the employer, and shall likewise submit to examination from time to time by any physician selected by the commission or any member or referee thereof.

(b) **Refusal to submit to examination.**—The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employee and his physical condition and ability to attend at the time and place fixed. The employee shall be entitled to have a physician provided and paid for by himself present at any such examination. So long as the employee, after such written request to the employer, shall fail or refuse to submit to such examination or shall in any way obstruct the same, his right to begin or maintain any proceeding for the collection of compensa-

tion shall be suspended, and if he shall fail or refuse to submit to such examination after direction by the commission, or any member or referee thereof, or shall in any way obstruct the same, his right to the weekly indemnity which shall accrue and become payable during the period of such failure, refusal or obstruction, shall be barred. Any physician who shall make or be present at any such examination may be required to testify as to the results thereof.

HEARINGS

§ 22. **Application for hearing on dispute.**—Upon filing with the commission by any party in interest of an application in writing stating the general nature of any dispute or controversy concerning compensation, or concerning any right of liability arising out of, or incident thereto, jurisdiction over which is vested by this act in the commission, including any controversy relating to or arising out of the provisions of subsection (a) of section fifteen of this act, a time and place shall be fixed for the hearing thereof, which shall be not less than ten days nor more than forty days after the filing of such application. The person filing such application shall be known as the applicant and the adverse party shall be known as the defendant. A copy of said application, together with a notice of the time and place of hearing thereof, shall forthwith be served upon all adverse parties and may be served either as a summons in a civil action or in the same manner as any other notice that is authorized or required to be served under the provisions of this act. A notice of the time and place of hearing shall also be served upon the applicant.

§ 23. **Defendant's answer.**—If any defendant desires to disclaim any interest in the subject-matter of the claim in controversy, or considers that the application is in any respect inaccurate or incomplete, or desires to bring any fact, paper or document to the attention of the commission as a defense to the claim, or otherwise, he must within five days after the service of the application upon him, file with or mail to the commission his answer setting forth the particulars in which the application is inaccurate or incomplete, and the facts upon which he intends to rely. A copy of such answer must be forthwith served upon all adverse parties.

§ 24. **(a) Pleadings—Testimony—Witnesses—Inspection.**—No pleadings, other than the application and answer, shall be required. The hearing on the application may be adjourned from time to time and from place to place in the discretion of the commission or commissioner or referee holding such hearing. Either party shall have the right to be present at any hearing, in person or by attorney or by any other agent, and to present such testimony as shall be pertinent under the pleadings, but the commission may, with or without notice to either party, cause testimony to be taken, or inspection of the premises where the injury occurred to be made, or the time-books and pay roll of the employer to be examined by any commissioner or any referee appointed by the commission, and may from time to time direct any employee claiming compensation to be examined by a regular physician; the testimony so taken and the results of any such inspection or examination to be reported to the commission for its consideration.

(b) Stipulation of facts.—The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the commission. The commission may thereupon make its findings and award based upon such stipulation, or may in its discretion set the matter down for hearing and take

such further testimony or make such further investigations as may be necessary to enable it to completely determine the matter in controversy.

§ 25. (a) Findings and award.—After final hearing by the commission, it shall, within thirty days, make and file (1) its findings upon all facts involved in the controversy and (2) its award which shall state its determination as to the rights of the parties.

(b) The commission in its award may fix and determine the total amount of compensation to be paid and specify the manner of payment, or may fix and determine the weekly disability indemnity to be paid and order payment thereof during the continuance of such disability.

(c) **Nominal disability indemnity.**—If, in any proceeding under sections twelve to thirty-five, inclusive, of this act, it is proved that an injury has been suffered for which the employer would be liable to pay compensation if disability had resulted therefrom, but it is not proved that any incapacity had resulted, the commission may, instead of dismissing the application, award a nominal disability indemnity, if it appears that disability is likely to result at a future time.

(d) **Orders may be rescinded, altered or amended.**—The commission shall have continuing jurisdiction over all its orders, decisions and awards made and entered under the provisions of sections twelve to thirty-five, inclusive, of this act and may at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter or amend any such order, decision or award made by it upon good cause appearing therefor; provided, that no award of compensation shall be rescinded, altered or amended after two hundred forty-five weeks from the date of the injury. Any order, decision or award rescinding, altering or amending a prior order, decision or award shall have the same effect as is herein provided for original orders, decisions or awards.

§ 26. (a) Filing of judgment.—Any party affected thereby may file a certified copy of the findings and award of the commission with the clerk of the superior court for any county, or city and county, and judgment must be entered by the clerk in conformity therewith immediately upon the filing of such findings and award.

(b) **Judgment roll.**—The certified copy of the findings and award of the commission and a copy of the judgment shall constitute the judgment roll. The pleadings, all orders of the commission, its original findings and award, and all other papers or documents filed in the cause shall remain on file in the office of the commission.

(c) **Stay of execution.**—The commission, or any member thereof, may stay the execution of any judgment entered upon an award of the commission, upon good cause appearing therefor and upon such terms and conditions as may be imposed. A certified copy of such order shall be filed with the clerk entering such judgment.

(d) **Satisfaction of judgment.**—When a judgment is satisfied in fact, otherwise than upon an execution, the commission may, upon motion of either party or of its own motion, order the entry of satisfaction of the judgment to be made, and upon filing a certified copy of such order with the said clerk, he shall thereupon enter such satisfaction, and not otherwise.

§ 27. Review by courts.—The orders, findings, decisions or awards of the commission made and entered under sections twelve to thirty-five, inclusive, of

this act may be reviewed by the courts specified in sections eighty-four and eighty-five hereof and within the time and in the manner therein specified and not otherwise.

§ 28. Costs.—No fees shall be charged by the clerk of any court for the performance of any official service required by this act, except for the docketing of awards as judgments and for certified copies of transcripts thereof. In all proceedings under this act before the commission, costs as between the parties shall be allowed or not in the discretion of the commission and the commission may in its discretion, where payments of compensation have been unreasonably delayed, allow the beneficiary thereof interest thereon, at not to exceed one and one-half per cent per month, during such period of delay.

LIENS

§ 29. (a) Assignment of claim.—No claim for compensation shall be assignable before payment, but this provision shall not affect the survival thereof, nor shall any claim for compensation, or compensation awarded, adjudged or paid, be subject to be taken for the debts of the party entitled to such compensation, except as hereinafter provided.

(b) The commission may fix and determine and allow as a lien against any amount to be paid as compensation:

(1) **Attorney's fee.**—A reasonable attorney's fee for legal services pertaining to any claim for compensation or application filed therefor and the reasonable disbursements in connection therewith.

(2) **Medical expense.**—The reasonable expense incurred by or on behalf of the injured employé, as defined in subsection (a) of section fifteen hereof.

(3) The reasonable value of the living expenses of an injured employé, not exceeding sixty-five per cent of his weekly wages between the date of his injury and the payment of the disability indemnity or death benefit awarded; provided, that no such allowance shall be made while an injured employé is confined to a hospital for treatment as a part of such treatment.

(4) **Burial expense.**—The reasonable burial expenses of the deceased employé, not to exceed the sum of one hundred dollars.

(c) **Other liens.**—If notice in writing be given to the employer setting forth the nature and extent of any claim, that may be allowed as a lien, the said claim shall be a lien against any amount thereafter to be paid as compensation, subject to the determination of the amount and approval thereof by the commission. The commission may, in its discretion, order the amount of such claim as fixed and allowed by it paid directly to the person entitled, either in a lump sum or in installments.

(d) **Claim for legal services limited.**—No claim or agreement for the legal services or disbursements mentioned in paragraph (1) of subsection (b) hereof, or for the expense mentioned in paragraph (2) of said subsection (b), in excess of a reasonable amount shall be valid or binding in any respect, and it shall be competent for the commission to determine what constitutes such reasonable amount.

(e) **Preference of claim.**—A claim for compensation for the injury or death of any employé, or any award or judgment entered thereon, shall have the same preference over the other unsecured debts of the employer as is given by law to claims for wages. Such preference shall be for the entire amount of compensation to be paid, but this section shall not impair the lien of any previous award.

LIABILITY OF PRINCIPALS AND CONTRACTORS

§ 30. The liability of principals and contractors for compensation under this act, when other than the immediate employer of the injured employé, shall be as follows:

(a) **Who may be held liable.**—The principal, any general contractor and each intermediate contractor who undertakes to do, or contracts with another to do, or to have done, any work, shall be liable to pay to any employé injured while engaged in the execution of such work, or to his dependents in the event of his death, any compensation which the immediate employer is liable to pay.

(b) **Recovery from immediate employer.**—The person entitled to such compensation shall have the right to recover the same directly from his immediate employer, and in addition thereto the right to enforce in his own name, in the manner provided by this act, the liability for compensation imposed upon other persons by this section, either by making such other persons parties to the original application or by filing a separate application; provided, however, that payment in whole or in part of such compensation by either the immediate employer or other person shall, to the extent of such payment, be a bar to recovery against the other by any person entitled to such compensation.

(c) **Recovery from person primarily responsible.**—When any person, other than the immediate employer, shall have paid any compensation for which he would not have been liable independently of this section, he shall, unless he caused the injury, be entitled to recover the full amount so paid from the person primarily liable therefor.

(d) **Limitations exposed.**—The liability imposed by this section upon such principal, general contractor and intermediate contractor shall be subject to the following limitations:

(1) Such liability shall exist only in cases where the injury occurred on or in or about the premises on which the principal, general contractor or intermediate contractor has undertaken to execute or to have executed any work, or when such premises or work are otherwise under his control or management.

(2) **Insurance discharges liability.**—Such liability shall not exist in the event that the immediate employer, or other person primarily liable for the compensation shall, previous to the suffering of such injury, have taken out, and maintained in full force and effect, compensation insurance with any insurance carrier, covering his full liability for compensation to the injured person or his dependents.

(3) The commission may, in its discretion, order that execution against the principal, general contractor and any intermediate contractor, be stayed until execution against the immediate employer shall be returned unsatisfied.

§ 31. **Compensator succeeds to rights in tort.**—The making of a lawful claim against an employer for compensation under this act for the injury or death of his employé shall operate as an assignment to the employer of any right to recover damages which the injured employé, or his personal representative, or other person, may have against any other party for such injury or death, and such employer shall be subrogated to any such right and may enforce in his own name the legal liability of such other party. The amount of compensation paid by the employer, or the amount of compensation to which the injured employé or his dependents is entitled, shall not be admissible in

evidence in any action brought to recover damages, but any amount collected by the employer, under the provisions of this section, in excess of the amount paid by the employer, or for which he is liable, shall be held by him for the benefit of the injured employé or other person entitled.

RELEASES AND SETTLEMENT AGREEMENTS

§ 32. (a) Employer cannot evade liability.—No contract, rule or regulation shall exempt the employer from liability for the compensation fixed by this act, but nothing in this act contained shall be construed as impairing the right of the parties interested to settle, subject to the provisions herein contained, any liability which may be claimed to exist under this act on account of such injury or death, or as conferring upon the dependents of any injured employé any interest which such employé may not divert by such settlement or for which he, or his estate, shall, in the event of such settlement by him, be accountable to such dependents or any of them.

(b) Settlement to be for full amount unless approved by the Commission.—The compensation herein provided shall be the measure of the responsibility which the employer has assumed for injuries or death that may occur to employés in his employment when subject to the provisions of this act, and no release of liability or settlement agreement shall be valid unless it provide for the payment of full compensation in accordance with the provisions of this act or unless it shall be approved by the commission.

(c) Release to be filed with the Commission.—A copy of any such release or settlement agreement signed by both parties shall forthwith be filed with the commission. When such release or settlement agreement is filed with the commission and approved by it, the commission may of its own motion, or on the application of either party, without notice, enter its award based upon such release or settlement agreement.

(d) Facts which must appear in all settlements.—Every such release or settlement agreement shall be in writing, duly executed and attested by two disinterested witnesses, and shall specify the date of the accident, the average weekly wages of the employé, determined according to section seventeen hereof, the nature of the disability, whether total or partial, permanent or temporary, the amount paid or due and unpaid to the employé up to the date of the release or agreement or death, as the case may be, and, if any, the amount of the payment or benefits then or thereafter to be made, and the length of time that such payment is to continue. In case of death there shall also be stated in such release or settlement agreement the date of death, the name of the widow, if any, the names and ages of all children, if any, and the names of all other dependents, if any, and whether such dependents be total or partial, and the amount paid or to be paid as a death benefit and to whom such payment is to be made.

§ 33. (a) Commission may commute compensation to lump sum.—At the time of making its award or at any time thereafter the commission on its own motion, either with or without notice, or upon application of either party with due notice to the other, may in its discretion, commute the compensation payable under this act to a lump sum, if it appears that such commutation is necessary for the protection of the person entitled thereto, or for the best interest of either party, or that it will avoid undue expense or hardship to either party, or that the employer has sold or otherwise disposed of the

greater part of his assets, or is about to do so, or that the employer is not a resident of this state, and the commission may order such compensation paid forthwith or at some future time.

(b) Methods of computing lump sum settlements.—The amount of the commuted payment shall be determined in accordance with the following provisions:

(1) If the injury causes temporary disability, the commission shall estimate the probable duration thereof and the probable amount of the temporary disability indemnity payable therefor in accordance with the provisions of section fifteen hereof and shall fix the lump sum payment at such amount so determined.

(2) If the injury causes permanent disability or death, the commission shall fix the total amount of the permanent disability indemnity or death benefit payable therefor in accordance with the provisions of said section fifteen and shall estimate the present value thereof, assuming interest at the rate of six per cent per annum, disregarding the probability of the beneficiary's death in all cases except where the percentage of permanent disability is such as to entitle the beneficiary to a life-pension, and then taking into consideration the probability of the beneficiary's death only in estimating the present value of such life pension.

(c) Commission to determine recipient—Payments from trust fund.—The commission in its discretion may order the lump sum payment, determined as hereinbefore provided, paid directly to the injured employé or to his dependents, or deposited with any savings bank or trust company authorized to transact business in this state, that will agree to accept the same as a deposit bearing interest at not less than four per cent per annum, or the commission may order the same deposited with the state compensation insurance fund. Any such amount so deposited, together with all interest thereon, shall thereafter be held in trust for the injured employé, or in the event of his death, for his dependents, who shall have no further recourse against the employer. Payments from said fund, when so deposited, shall be made by the trustee only in the same amounts and at the same times as fixed by the order of the commission and until said fund and interest thereon shall be exhausted. In the appointment of the trustee preference shall be given, in the discretion of the commission, to the choice of the injured employé or his dependents. Upon the making of such payment, the employer shall present to the commission a proper receipt evidencing the same, executed either by the injured employé or his dependents, or by the trustee and the commission shall thereupon issue its certificate in proper form evidencing the same, and such certificate, upon filing with the clerk of the superior court in which any judgment upon an award may have been entered, shall operate as a satisfaction of said award and shall fully discharge the employer from any further liability on account thereof.

INSURANCE PROVISIONS

§ 34. (a) Right of employer to insure.—Nothing in this act shall affect the organization of any mutual or other insurance company, or any existing contract for insurance or the right of the employer to insure in mutual or other companies, in whole or in part, against liability for the compensation provided for by this act; or, to provide by mutual or other insurance, or by arrangement with his employés, or otherwise, for the payment to such employés, their

families, dependents or representatives, of sick, accident or death benefits, in addition to the compensation provided for by this act; provided, however, that it shall be unlawful for any employer to exact or receive from any employé any contribution, or make or take any deduction from the earnings of any employé, either directly or indirectly, to cover the whole or any part of the cost of compensation under this act, and it shall be a misdemeanor so to do.

(b) Insurance carrier and employer liable.—Liability for compensation shall not be reduced or affected by any insurance, contribution, or other benefit whatsoever due to or received by the person entitled to such compensation, except as otherwise provided by this act, and the person so entitled shall, irrespective of any insurance or other contract, except as otherwise provided in this act, have the right to recover such compensation directly from the employer, and in addition thereto, the right to enforce in his own name, in the manner provided in this act, either by making the insurance carrier a party to the original application or by filing a separate application, the liability of any insurance carrier, which may, in whole or in part, have insured against liability for such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance company shall, to the extent thereof, be a bar to recovery against the other of the amount so paid; and provided, further, that as between the employer and the insurance company, payment by either directly to the employé, or to the person entitled to compensation, shall be subject to the conditions of the insurance contract between them.

(c) Both equally bound.—Every contract insuring against liability for compensation, or insurance policy evidencing the same, must contain a clause to the effect that the insurance carrier shall be directly and primarily liable to the employé and, in the event of his death, to his dependents, to pay the compensation, if any, for which the employer is liable; that, as between the employé and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this act, be jurisdiction of the insurance carrier and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer under the provisions of this act.

(d) Insolvency of employer makes insurance carrier liable.—Such policy must also provide that the employé shall have a first lien upon any amount which shall become owing on account of such policy to the employer from the insurance carrier and that in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the employé or his dependents, the said insurance carrier may and shall pay the same directly to the said employé or his dependents, thereby discharging to the extent of such payment the obligations of the employer, to the employé, and such policy shall not contain any provisions relieving the insurance carrier from payment when the employer becomes insolvent or is discharged in bankruptcy, or otherwise, during the period that the policy is in operation or the compensation remains owing.

(e) 1. Insurance carrier may be substituted for employer.—If the employer shall be insured against liability for compensation with any insurance carrier, and if after the suffering of any injury such insurance carrier shall

serve or cause to be served upon any person claiming compensation against such employer a notice that it has assumed and agreed to pay the compensation, if any, for which the employer is liable, and shall file a copy of such notice with the commission, such employer shall thereupon be relieved from liability for compensation to such claimant and the insurance carrier shall, without notice, be substituted in place of the employer in any proceeding theretofore or thereafter instituted by such person to recover such compensation, and the employer shall be dismissed therefrom. Such proceeding shall not abate on account of such substitution but shall be continued against such insurance carrier.

2. Notice of employer of liability of insurance carrier.—If at the time of the suffering of an injury for which compensation is claimed, or may be claimed, the employer shall be insured against liability for the full amount of compensation payable, or that may become payable, the employer may serve or cause to be served upon any person claiming compensation on account of the suffering of such injury and upon the insurance carrier a notice that the insurance carrier has in its policy contract or otherwise, assumed and agreed to pay the compensation, if any, for which the employer is liable, and may file a copy of such notice with the commission. If it shall thereafter appear to the satisfaction of the commission that the insurance carrier has, through the issuance of its contract of insurance or otherwise, assumed such liability for compensation, such employer shall thereupon be relieved from liability for compensation to such claimant and the insurance carrier shall, after notice, be substituted in place of the employer in any proceeding theretofore or thereafter instituted by such person to recover such compensation, and the employer shall be dismissed therefrom. Such proceeding shall not abate on account of such substitution, but shall be continued against such insurance carrier.

(2) Insurance carrier subrogated to employer's rights.—Where any employer is insured against liability for compensation with any insurance carrier and such insurance carrier shall have paid any compensation for which the employer was liable, or shall have assumed the liability of the employer therefor, it shall be subrogated to all rights and duties of the employer and may enforce any such rights in its own name.

§ 35. (a) Limited policy to be plainly evidenced.—If any insurance policy shall be issued covering liability for compensation, which policy shall contain any limitation as to the compensation payable, such limitation shall be printed in the body of such policy in bold-face type and in addition thereto the words "limited compensation policy" shall be printed on the top of the policy in bold-faced type not less than eighteen point in size.

(b) No insurance against liability for damages.—No insurance carrier shall insure against the liability of the employer for damages recoverable at law by the injured employé under the optional provisions contained in section twelve hereof, and any insurance carrier liable to any such injured employé for compensation upon the payment of the same shall have the same option given by said section twelve to such employé and shall be fully subrogated to his rights, and may enforce such liability for damages against the employer in its own name, anything in the insurance contract to the contrary notwithstanding.

STATE COMPENSATION INSURANCE FUND

§ 36. Creation of the fund—Its purpose.—There is hereby created and established a fund to be known as the "state compensation insurance fund," to be administered by the industrial accident commission of the state, without liability on the part of the state beyond the amount of said fund, for the purpose of insuring employers against liability for compensation under this act and against the expense of defending any suit for damages under the optional provisions of section twelve hereof (subdivision b), and insuring to employes and other persons the compensation fixed by this act for employes and their dependents.

§ 37. (a) Nature of the fund.—The state compensation insurance fund shall be a revolving fund and shall consist of such specific appropriations as the legislature may from time to time make or set aside for the use of such fund, all premiums received and paid into the said fund for compensation insurance issued, all property and securities acquired by and through the use of moneys belonging to said fund and all interest earned upon moneys belonging to said fund and deposited or invested, as herein provided.

(b) Charges against fund.—Said fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of the salaries and other expenses to be charged against said fund in accordance with the provisions contained in this act.

(c) Self-supporting.—Said fund shall, after a reasonable time during which it may establish a business, be fairly competitive with other insurance carriers, and it is the intent of the legislature that said fund shall ultimately become neither more nor less than self-supporting. In order that the state compensation insurance fund shall ultimately become neither more nor less than self-supporting, the actual loss experience and expense of the fund shall be ascertained on or about the first of January in each year for the year preceding, and should it then be shown that there exists an excess of assets over liabilities, such liabilities to include the necessary reserves, and a reasonable surplus for the catastrophe hazard, then, in the discretion of the commission, a cash dividend shall be declared to, or a credit allowed on the renewal premium of each employer who has been insured with the fund, such cash dividend or credit to be such an amount to which, as in the discretion of the commission, such employer may be entitled as the employer's proportion of divisible surplus.

§ 38. (a) Administered by Commission.—The commission is hereby vested with full power, authority and jurisdiction over the state compensation insurance fund and may do and perform any and all things whether herein specifically designated, or in addition thereto, which are necessary or convenient in the exercise of any power, authority or jurisdiction over said fund in the administration thereof, or in connection with the insurance business to be carried on by it under the provisions of this act, as fully and completely as the governing body of a private insurance carrier might or could do.

(b) Powers of the Commission in connection with the administration of the fund.—The commission shall have full power and authority, and it shall be its duty, to fix and determine the rates to be charged by the state compensation insurance fund for compensation insurance, and to manage and conduct all business and affairs in relation thereto, all of which business and

affairs shall be conducted in the name of the state compensation insurance fund, and in that name, without any other name or title, the commission may:

(1) Sue and be sued in all the courts of the state in all actions arising out of any act, deed, matter or thing made, omitted, entered into, done, or suffered in connection with the state compensation insurance fund, the administration, management or conduct of the business or affairs relating thereto.

(2) Make and enter into contracts of insurance as herein provided, and such other contracts or obligations relating to the state compensation insurance fund as are authorized or permitted under the provisions of this act.

(3) Invest and reinvest the moneys belonging to said fund as hereinafter provided.

(4) Conduct all business and affairs, relating to the state compensation insurance fund, whether herein specifically designated or in addition thereto.

(c) Delegation of powers.—The commission may delegate to the manager of the state compensation insurance fund, or to any other officer, under such rules and regulations and subject to such conditions as it may from time to time prescribe, any of the powers, functions or duties, conferred or imposed on the commission, under the provisions of this act in connection with the state compensation insurance fund, the administration, management and conduct of the business and affairs relating thereto, and the officer or officers to whom such delegation is made may exercise the powers and functions and perform the duties delegated with the same force and effect as the commission, but subject to its approval.

(d) Commissioners not personally liable.—The commission shall not, nor shall any commissioner, officer or employee thereof, be personally liable in his private capacity for or on account of any act performed or contract or other obligation entered into or undertaken in an official capacity, in good faith and without intent to defraud, in connection with the administration, management or conduct of the state compensation insurance fund, its business or other affairs relating thereto.

§ 39. Powers and duties of the manager of the fund.—In conducting the business and affairs of the state compensation insurance fund, the manager of the said fund or other officer to whom such power and authority may be delegated by the commission, as provided by subsection (c) of section thirty-eight thereof, shall have full power and authority:

(1) To enter into contracts of insurance, insuring employers against liability for compensation and insuring to employees and other persons the compensation fixed by this act.

(2) To sell annuities covering compensation benefits.

(3) To decline to insure any risk in which the minimum requirements of the commission with regard to construction, equipment and operation are not observed, or which is beyond the safe carrying of the state compensation insurance fund, but shall not have power or authority, except as otherwise provided in this subdivision, to refuse to insure any compensation risk tendered with the premium therefor.

(4) To reinsure any risk or any part thereof.

(5) To inspect and audit, or cause to be inspected and audited the pay rolls of employers applying for insurance against liability for compensation.

(6) To make rules and regulations for the settlement of claims against said fund and to determine to whom and through whom the payments of compensation are to be made.

(7) To contract with physicians, surgeons and hospitals for medical and surgical treatment and the care and nursing of injured persons entitled to benefits from said fund.

§ 40. (a) Rates.—It shall be the duty of the commission to fix and determine the rates to be charged by the state compensation insurance fund for compensation insurance coverage as herein provided, and such rates shall be fixed with due regard to the physical hazards of each industry, occupation or employment and, within each class, so far as practicable, in accordance with the elements of bodily risk or safety or other hazard of the plant or premises or work of each insured and the manner in which the same is conducted, together with a reasonable regard for the accident experience and history of each such insured, and the means and methods of caring for injured persons, but such rates shall take no account of the extent to which the employees in any particular establishment have or have not persons dependent upon them for support.

(b) Basis upon which rates are to be fixed.—The rates so made shall be that percentage of the pay roll of any employer which, in the long run and on the average, shall produce a sufficient sum, when invested at three and one-half per cent. interest:

(1) To carry all claims to maturity; that is to say the rates shall be based upon the "reserve" and not upon the "assessment" plan;

(2) To meet the reasonable expenses of conducting the business of such insurance;

(3) To produce a reasonable surplus to cover the catastrophe hazard.

§ 41. Character of the policy to be issued.—The insurance contracts entered into between the state compensation insurance fund and persons insuring therewith may be either limited or unlimited and issued for one year or, in the form of stamps or tickets or otherwise, for one month or any number of months less than one year, or for one day or any number of days less than one month, or during the performance of any particular work, job or contract; provided, that the rates charged shall be proportionately greater for a shorter than for a longer period and that a minimum premium charge shall be fixed in accordance with a reasonable rate for insuring one person for one day. Nothing in this act shall be construed to prevent any person applying for compensation insurance from being covered temporarily until the application is finally acted upon, or to prevent the insured from surrendering any policy at any time and having returned to him the difference between the premium paid and the premium at the customary short term for the shorter period which such policy has already run. The state compensation insurance fund may at any time cancel any policy, after due notice, upon a pro rata basis of premium repayment.

§ 42. Self-employers and casual employees.—The state compensation insurance fund may issue policies, including with their employees, employers who perform labor incidental to their occupations, and including also members of the families of such employers engaged in the same occupation, such policies insuring to such employers and working members of their families the same compensations provided for their employees, and at the same rates; provided, that the estimations of their wage values, respectively, shall be reasonable and separately stated in and added to the valuation of their pay rolls upon which their premium is computed. Such policies may likewise be sold to self-employing persons and to casual employees, who, for the purpose of such insurance,

shall be deemed to be employees within the meaning of sections twelve to thirty-five, inclusive, of this act.

§ 43. **Custodian of funds.**—The treasurer of the state shall be custodian of all moneys and securities belonging to the state compensation insurance fund, except as otherwise provided in this act, and shall be liable on his official bond for the safe-keeping thereof. All moneys belonging to said fund collected or received by the commission, or the manager of the state compensation insurance fund, under and by virtue of the provisions of this act, shall be delivered to the treasurer of the state or may be deposited to his credit in such bank or banks throughout the state as he may, from time to time, designate, and such moneys when so delivered or deposited shall be credited by the treasurer to the said fund and no moneys received or collected on account of such fund shall be expended or paid out of such fund without first passing into the state treasury and being drawn therefrom as provided in this act. In like manner there shall be delivered to the treasurer all securities belonging to said fund which shall be held by him until otherwise disposed of as provided in this act.

§ 44. (a) **Accounting.**—The commission shall submit each month to the state board of control an estimate of the amount necessary to meet the current disbursements from the state compensation insurance fund during each succeeding calendar month and, when such estimate shall be approved by the state board of control, the controller is directed to draw his warrant on said fund in favor of said commission for such amount, and the treasurer is authorized and directed to pay the same.

(b) At the end of each calendar month the commission shall account to the state board of control and the state controller for all moneys so received, furnishing proper vouchers therefor.

(c) **Semi-annual valuation of properties.**—During the months of January and of July of each year the state board of control or the commission shall cause a valuation to be made of the properties and securities which have been acquired and which are held for said fund, and shall report the results of the same to the state controller, whose duty it shall be to keep a special ledger account showing all of the assets pertaining to the state compensation insurance fund. In the controller's general ledger this fund account may be carried merely as a cash account, like other accounts of funds in the state treasury, and therein only the actual cash coming into the state compensation insurance fund shall be credited to such fund.

§ 45. (a) **Investment of surplus.**—The commission shall cause all moneys in the state compensation insurance fund, in excess of current requirements, to be invested and reinvested, from time to time, in the securities now or hereafter authorized by law for the investment of funds of savings banks.

(b) The commission shall, from time to time, submit to the state board of control an estimate of the amount required by it for investment, which estimate shall be accompanied by a full description of the kind and character of the investments to be made and, when such estimate shall be approved by the state board of control, the controller is directed to draw his warrant on the state compensation insurance fund in favor of the commission for such amount and the treasurer is authorized and directed to pay the same.

(c) At the end of each calendar month the commission shall account to the said board of control and the state controller for all moneys so received, furnishing proper vouchers therefor.

(d) All moneys in said fund, in excess of current requirements and not otherwise invested, may be deposited by the state treasurer from time to time in the banks authorized by law to receive deposits of public moneys under the same rules and regulations that govern the deposit of other public funds and the interest accruing thereon shall be credited to the state compensation insurance fund.

§ 46. Insurance of public corporations.—Each county, city and county, city, school district or other public corporation or quasi-public corporation within the state not including, however, any public utility corporation, may insure against its liability for compensation with the state compensation insurance fund and not with any other insurance carrier unless such fund shall refuse to accept the risk when the application for insurance is made, and the premium therefor shall be a proper charge against the general fund of each such political subdivision of the state.

§ 47. Public officials to act as agents.—When the premium rates for insurance in the state compensation insurance fund shall have been established the commission shall furnish schedules of rates and copies of the forms of policy to the commissioner of labor, to the clerk and to the treasurer of every county, city and county, and city in the state, and it shall be the duty of every public officer to whom the foregoing may be furnished to fill out and transmit to the manager of the state compensation insurance fund applications for compensation insurance in such fund and to receive and transmit to said manager all premiums paid on account of any policy issued or applied for, and for this service such officials may be allowed such commission or other compensation as the commission may from time to time direct.

§ 48. Quarterly reports.—The commission shall each quarter make to the governor of the state, reports of the business done by the state compensation insurance fund during the previous quarter, and a statement of the fund's resources and liabilities, and it shall be the duty of the state board of control to audit such reports and to cause an abstract thereof to be published one or more times in at least two newspapers of general circulation in the state. The commission shall likewise make to the state insurance commissioner all reports required by law to be made by other insurance carriers.

§ 49. Penalty for misrepresentation.—Any employer who shall wilfully misrepresent the amount of the pay roll upon which his premium under this act is to be based shall be liable to the state in ten times the amount of the difference in premium paid and the amount the employer should have paid had his pay roll been correctly computed, and the liability to the state under this section shall be enforced in a civil action in the name of the state compensation insurance fund and any amount so collected shall become a part of said fund.

§ 50. Any misrepresentation.—Any person who wilfully misrepresents any fact in order to obtain insurance at less than the proper rate for such insurance, or in order to obtain any payments out of such fund, shall be guilty of a misdemeanor.

SAFETY PROVISIONS

§ 51. Terms defined.—The following terms, as used in sections fifty-one to seventy-two, inclusive, of this act, shall, unless a different meaning is plainly required by the context, be construed as follows:

(1) **"Place of employment."**—The phrase "place of employment" shall mean and include every place, whether indoors or out or underground, or elsewhere, and the premises appurtenant thereto, where, either temporarily or permanently, any industry, trade, work or business is carried on, or where any process or operation directly or indirectly related to any industry, trade, work or business, is carried on, and where any person is directly or indirectly employed by another for direct or indirect gain or profit, but shall not include any place where persons are employed solely in farm, dairy, agricultural, viticultural or horticultural labor, in stock or poultry raising or in household domestic service.

(2) **"Employment."**—The term "employment" shall mean and include any trade, work, business, occupation or process of manufacture, or any method of carrying on such trade, work, business, occupation or process of manufacture in which any person may be engaged, except where persons are employed solely in farm, dairy, agricultural, viticultural or horticultural labor, in poultry or stock raising or in household domestic services.

(3) **"Employer."**—The term "employer" shall mean and include every person, firm, voluntary association, corporation, officer, agent, manager, representative or other person having control or custody of any employment, place of employment or of any employee.

(4) **"Employé."**—The term "employee" shall mean and include every person who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go to work or be at any time in any place of employment.

(5) **"Order."**—The term "order" shall mean and include any decision, rule, regulation, direction, requirement or standard of the commission or any other determination arrived at or decision made by such commission under the safety provisions of this act.

(6) **"General order."**—The term "general order" shall mean and include such order made, under the safety provisions of this act, as applies generally throughout the state to all persons, employments or places of employment, or all persons, employments or places of employment of a class under the jurisdiction of the commission. All other orders of the commission shall be considered special orders.

(7) **"Local order."**—The term "local order" shall mean and include any ordinance, order, rule or determination of any board of supervisors, city council, board of trustees or other governing body of any county, city and county, city or of any school district or other public corporation, or an order or direction of any other public official or board or department upon any matter over which the industrial accident commission has jurisdiction.

(8) **"Safe"—"Safety."**—The terms "safe" and "safety" as applied to an employment or a place of employment shall mean such freedom from danger to the life or safety of employees as the nature of the employment will reasonably permit.

(9) **"Safety devices"—"Safeguards."**—The terms "safety device" and "safeguard" shall be given a broad interpretation so as to include any practicable method of mitigating or preventing a specific danger.

§ 52. **Employment must be reasonably safe.**—Every employer shall furnish employment which shall be safe for the employees therein and shall furnish a place of employment which shall be safe for employees therein, and shall furnish and use such safety devices and safeguards, and shall adopt

and use such practices, means, methods, operations and processes as are reasonably adequate to render such employment and place of employment safe, and shall do every other thing reasonably necessary to protect the life and safety of such employees.

§ 53. **Safety devices.**—No employer shall require, permit or suffer any employé to go or be in any employment or place of employment which is not safe, and no such employer shall fail to furnish, provide and use safety devices and safeguards or fail to adopt and use methods and processes reasonably adequate to render such employment and place of employment safe, and no such employer shall fail or neglect to do every other thing reasonably necessary to protect the life and safety of such employés, and no such employer shall occupy or maintain any place of employment that is not safe.

§ 54. **Unsafe structures.**—No employer, owner or lessee of any real property in this state shall construct or cause to be constructed any place of employment that is not safe.

§ 55. **Interference with safety devices.**—No employé shall remove, displace, damage, destroy or carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any employé in such employment, or place of employment, or fail or neglect to do every other thing reasonably necessary to protect the life and safety of such employés.

§ 56. **Powers of the Commission in connection with safety matters.**—The commission is vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment in this state as may be necessary adequately to enforce and administer all laws and all lawful orders requiring such employment and place of employment to be safe, and requiring the protection of the life and safety of every employé in such employment or place of employment.

§ 57. The commission shall have power, after a hearing had upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise:

(1) **Safety devices.**—To declare and prescribe what safety devices, safeguards or other means or methods of protection are well adapted to render the employés of every employment and place of employment safe as required by law or lawful order.

(2) **Safety standards.**—To fix such reasonable standards and to prescribe, modify and enforce such reasonable orders for the adoption, installation, use, maintenance and operation of safety devices, safeguards and other means or methods of protection, to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of employés in employments and places of employment.

(3) **Standards of construction.**—To fix and order such reasonable standards for the construction, repair and maintenance of places of employment as shall render them safe.

(4) **Protection of life.**—To require the performance of any other act which the protection of the life and safety of employés in employments and places of employment may demand.

(5) **Reporting of injuries.**—To declare and prescribe the general form of industrial injury reports, the injuries to be reported and the information to be

furnished in connection therewith, and the time within which such reports shall be filed. Nothing in this act contained shall be construed to prevent the commission from requiring supplemental injury reports.

§ 58. Public hearing on safety orders.—Upon the fixing of a time and place for the holding of a hearing for the purpose of considering and issuing a general safety order or orders as authorized by section fifty-seven hereof, the commission shall cause a notice of such hearing to be published in one or more daily newspapers of general circulation published and circulated in the city and county of San Francisco, and also in one or more daily newspapers of general circulation published and circulated in the county of Los Angeles, such newspapers to be designated by the commission for that purpose. No defect or inaccuracy in such notice or in the publication thereof shall invalidate any general order issued by the commission after hearing had.

§ 59. May order employment and places of employment made safe.—Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that any employment or place of employment is not safe or that the practices or means or methods or operations or processes employed or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of employes in such employments and places of employment, the commission shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employes in such employments and places of employment and may in said order direct that such additions, repairs, improvements or changes be made and such safety devices and safeguards be furnished, provided and used, as are reasonably required to render such employment or place of employment safe, in the manner and within the time specified in said order.

§ 60. Stay of order.—The commission may, upon application of any employer, or other person affected thereby, grant such time as may reasonably be necessary for compliance with any order, and any person affected by such order may petition the commission for an extension of time, which the commission shall grant if it finds such an extension of time necessary.

§ 61. Order without hearing.—Whenever the commission shall learn or have reason to believe that any employment or place of employment is not safe or is injurious to the welfare of any employe it may, of its own motion, or upon complaint, summarily investigate the same, with or without notice or hearings, and after a hearing upon such notice as it may prescribe, the commission may enter and serve such order as may be necessary relative thereto, anything in this act to the contrary notwithstanding.

§ 62. Orders must be obeyed.—Every employer, employe and other person shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the commission in connection with the matters herein specified, or in any way relating to or affecting safety of employments or places of employment, or to protect the life and safety of employes in such employments or places of employment, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation.

§ 63. Review of orders.—The orders of the commission, general or special, its rules or regulations, findings and decisions, made and entered under the safety provisions of this act, may be reviewed by the courts specified in

sections eighty-four and eighty-five of this act and within the time and in the manner therein specified and not otherwise.

§ 64. Additional safety regulations by city or county authorities.—Nothing contained in this act shall be construed to deprive the board of supervisors of any county, or city and county, the board of trustees of any city, or any other public corporation or board or department, of any power or jurisdiction over or relative to any place of employment; provided, that whenever the commission shall, by order, fix a standard of safety for employments or places of employment, such order shall, upon the filing by the commission of a copy thereof with the clerk of the county, city and county, or city to which it may apply, establish a minimum requirement concerning the matters covered by such order and shall be construed in connection with any local order relative to the same matter and to amend or modify any requirement in such local order not up to the standard of the order of the commission.

§ 65. The commission shall have further power and authority:

(1) **Museums of safety.**—To establish and maintain museums of safety and hygiene in which shall be exhibited safety devices, safeguards and other means and methods for the protection of the life and safety of employes, and to publish and distribute bulletins on any phase of this general subject.

(2) **Public lectures.**—To cause lectures to be delivered, illustrated by stereopticon or other views, diagrams or pictures, for the information of employers and their employes and the general public in regard to the causes and prevention of industrial accidents, occupational diseases and related subjects.

(3) **Safety advisers.**—To appoint advisers who shall, without compensation assist the commission in establishing standards of safety and the commission may adopt and incorporate in its general orders such safety recommendations as it may receive from such advisers.

§ 66. Orders presumed to be reasonable.—Every order of the commission, general or special, its rules and regulations, findings and decisions, made and entered under the safety provisions of this act shall be admissible as evidence in any prosecution for the violation of any of the said provisions and shall, in every such prosecution, be conclusively presumed to be reasonable and lawful and to fix a reasonable and proper standard and requirement of safety, unless, prior to the institution of the prosecution for such violation or violations, proceedings for a rehearing thereon or a review thereof shall have been instituted as provided in sections eighty-one to eighty-five, inclusive, of this act and not then finally determined.

§ 67. Violation of orders.—Every employer, employé or other person who, either individually or acting as an officer, agent or employé of a corporation or other person, violates any safety provision contained in sections fifty-two, fifty-three, fifty-four or fifty-five of this act, or any part of any such provision, or who shall fail or refuse to comply with any such provision or any part thereof, or who, directly or indirectly, knowingly induces another so to do is guilty of a misdemeanor. In any prosecution under this section it shall be deemed prima facie evidence of a violation of any such safety provision, that the accused has failed or refused to comply with any order, rule, regulation or requirement of the commission relative thereto and the burden of proof shall thereupon rest upon the accused to show that he has complied with such safety provision.

§ 68. **Separate offenses.**—Every violation of the provisions contained in sections fifty-two, fifty-three, fifty-four or fifty-five, of this act, or any part or portion thereof, by any person or corporation is a separate and distinct offense, and, in the case of a continuing violation thereof, each day's continuance thereof shall constitute a separate and distinct offense.

§ 69. **"Accident prevention fund."**—All fines imposed and collected under prosecutions for violations of the provisions of sections fifty-one to seventy-two inclusive of this act, shall be paid into the state treasury to the credit of the "accident prevention fund," which fund is hereby created.

§ 70. **Information confidential.**—It shall be unlawful for any member of the commission, or for any officer or employé of the commission, to divulge to any person not connected with the administration of this act any confidential information obtained from any person, concerning the failure of any other person to keep any place of employment safe, or concerning the violation of any order, rule or regulation issued by the commission. Any member of the commission or any officer or employé of the commission divulging such confidential information shall be guilty of a misdemeanor.

§ 71. (a) **Reporting of industrial injuries.**—Every employer of labor, without any exceptions, and every insurance carrier, and every physician or surgeon who attends any injured employé, is hereby required to file with the commission, under such rules and regulations as the commission may from time to time make, a full and complete report of every injury to an employé arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the commission in such form and such detail as the commission shall from time to time prescribe, and shall make specific answers to all questions required by the commission under its rules and regulations. It shall be unlawful for any person, firm, corporation, agent or officer of a firm or corporation, to fail or refuse to comply with any of the provisions of this section, and any such person, firm, corporation, agent or officer of a firm or corporation, who fails or refuses to comply with the provisions of this section shall be guilty of a misdemeanor for each and every offense and upon conviction thereof shall be punishable by a fine of not less than ten dollars nor more than one hundred dollars. Any such employer or insurance carrier who shall furnish such report shall be exempt from furnishing any similar report or reports authorized or required under the laws of this state.

(b) **Answers to questions of Commission.**—Every employer or insurance carrier receiving from the commission any blanks with directions to fill out the same shall cause the same to be properly filled out so as to answer fully and correctly each question propounded therein; in case he is unable to answer any such questions a good and sufficient reason shall be given for such failure.

(c) **Information not open to the public.**—No information furnished to the commission by an employer or an insurance carrier shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any officer or employé of the commission who, in violation of the provisions of this subsection, divulges any information shall be guilty of a misdemeanor.

§ 72. (a) **Study of causes of industrial injuries.**—The commission shall investigate the cause of all industrial injuries occurring within the state in any employment or place of employment, or directly or indirectly arising

from or connected with the maintenance or operation of such employment or place of employment, resulting in disability or death and requiring, in the judgment of the commission, such investigation; and the commission shall have the power to make such orders or recommendations with respect to such injuries as may be just and reasonable, provided that neither the order nor the recommendation of the commission, nor any report of injury filed with the commission, shall be admitted as evidence in any action for damages or any proceeding to recover compensation, based on or arising out of such injury or death.

(b) May enter places of employment.—For the purpose of making any investigation which the commission is authorized to make under the provisions of this section, or for the purpose of collecting statistics or examining the provision made for the safety of employes, any member of the commission, inspector or other person designated by the commission for that purpose, may enter any place of employment.

(c) Obstruction by employer a misdemeanor.—Any employer, insurance carrier or any other person who shall violate or omit to comply with any of the provisions of this section, or who shall in any way obstruct or hamper the commission, any commissioner or other person conducting any investigation authorized to be undertaken or made by the commission, shall be guilty of a misdemeanor.

PROCEEDINGS BEFORE THE COMMISSION

§ 73. (a) Exclusive jurisdiction in compensation cases.—All proceedings for the recovery of compensation, or concerning any right or liability arising out of or incidental thereto, or for the enforcement against the employer or an insurance carrier of any liability for compensation imposed upon him by this act in favor of the injured employé, his dependents or any third person, or for the determination of any question as to the distribution of compensation among dependents or other persons or for the determination of any question as to who are dependents of any deceased employé, or what persons are entitled to any benefit under the compensation provisions of this act, or for obtaining any order which by this act the commission is authorized to make, shall be instituted before the commission, and not elsewhere, except as otherwise in this act provided, and the commission is hereby vested with full power, authority and jurisdiction to try and finally determine all such matters, subject only to the review by the courts in this act specified and in the manner and within the time in this act provided.

(b) Acts and orders prima facie lawful.—All orders, rules and regulations, findings, decisions and awards of the commission in conformity with law shall be in force and shall be prima facie lawful; and all such orders, rules and regulations, findings, decisions and awards shall be conclusively presumed to be reasonable and lawful, until and unless they are modified or set aside by the commission or upon a review by the courts in this act specified and within the time and in the manner herein specified.

§ 74. (a) Service of orders.—Any notice, order or decision required by this act to be served upon any person or party either before, during or after the institution of any proceeding before the commission, may be served in the manner provided by chapter V, title XIV of part II of the Code of Civil Procedure of this state, unless otherwise directed by the commission or a

member thereof, in which event the same shall be served in accordance with the order or direction of said commission or member thereof.

(b) Powers of employés of Commission.—The secretary, assistant secretary and the inspectors appointed by the commission shall have all of the powers conferred by law upon peace officers to carry weapons, make arrests and serve warrants and other process in any county or city and county of this state.

(c) Service upon public officers.—Any such notice, order or decision affecting the state or any city and county, city, school district or public corporation therein, shall be served upon the same officer, officers, person or persons, upon whom the service of similar notices, orders or decisions is authorized by law.

§ 75. The commission shall have full power and authority:

(1) Commission may make rules of procedure.—To adopt reasonable and proper rules of practice and procedure;

(2) To regulate and provide the manner, and by whom, minors and incompetent persons shall appear and be represented before it;

(3) May appoint trustees.—To appoint a trustee or guardian ad litem to appear for and represent any such minor or incompetent upon such terms and conditions as it may deem proper; and such guardian or trustee must, if required by the commission or a commissioner, give a bond in the same form and of the same character required by law from a guardian appointed by the courts and in such an amount as the commission or a commissioner may fix and determine, such bond to be approved by the commission or a commissioner, and such guardian or trustee shall not be discharged from liability until he shall have filed an account with the commission or with the probate court and such account shall have been approved. The trustee or guardian shall be entitled to receive such compensation for his services as shall be fixed and allowed by the commission or by the probate court;

(4) May join parties.—To provide for the joinder in the same proceeding of all persons interested therein, whether as employer, insurance carrier, employé, dependent, creditor or otherwise;

(5) To regulate and prescribe the kind and character of notices, where not otherwise prescribed by this act, and the service thereof;

(6) To regulate and prescribe the nature and extent of the proofs and evidence.

§ 75a. Jurisdiction of Commission.—The commission shall have jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this state in those cases where the injured employé is a resident of this state at the time of the injury and the contract of hire was made in this state and any such employé or his dependents shall be entitled to the compensation or death benefits provided by this act.

§ 76. (a) Commission may try any or all issues before it.—The commission may by order entered upon its minutes, upon the agreement of the parties, upon the application of either, or of its own motion, and either with or without notice, direct and order a reference in the following cases:

(1) To try any or all of the issues in any proceeding before it, whether of fact or of law, and to report a finding, order, decision or award to be based thereon.

(2) To ascertain a fact necessary to enable the commission to determine any proceeding before it or to make any order, decision or award that the commission is authorized to make under this act, or that is necessary for the information of the commission.

(b) May appoint trustees.—The commission may appoint one or more referees in any proceeding, as it may deem necessary or advisable, and may refer separate matters arising out of the same proceeding to different referees. It may also, in its discretion, appoint general referees who shall hold office during the pleasure of the commission. Any referee appointed by the commission shall have such powers, jurisdiction and authority as is granted under the law, by the order of appointment and by the rules of the commission and shall receive such salary or compensation for his services as may be fixed by the commission.

(c) Objection to referee.—Any party to the proceeding may object to the appointment of any person as referee upon any one or more of the grounds specified in section 641 of the Code of Civil Procedure and such objection must be heard and disposed of by the commission. Affidavits may be read and witnesses examined as to such objections.

(d) Oath of referee.—Before entering upon his duties, the referee must be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and determine the allegations and evidence of the parties in relation to the matters in the reference, and to make just findings and report according to his understanding.

(e) Referee's findings.—The referee must report his findings in writing to the commission within twenty days after the testimony is closed. Such report shall be made in the form prescribed by the commission and shall include all matters required to be included in the order of reference or by the rules of the commission. The facts found and conclusions of law must be separately stated.

(f) Action on report of referee.—Upon the filing of the report of the referee, the commission may confirm, adopt, modify or set aside the same or any part thereof and may, either with or without further proceedings, and either with or without notice, enter its order, findings, decision or award based in whole or in part upon the report of the referee.

§ 77. (a) No technical rules of evidence.—All hearings and investigations before the commission or any member thereof, or any referee appointed thereby, shall be governed by this act and by the rules of practice and procedure adopted by the commission, and in the conduct thereof neither the commission nor any member thereof nor any referee appointed thereby shall be bound by the technical rules of evidence. No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, rule or regulation made, approved or confirmed by the commission; nor shall any order, award, rule or regulation be invalidated because of the admission into the record, and use as proof of any fact in dispute, in the discretion of the commission, of any hearsay or testimony not competent to be admitted in a trial in court; provided, that such hearsay or testimony be or refer to the statements, written or oral, of a person who is dead or who can not after diligent search be found, and relate directly to the injury in question.

(b) Depositions.—The commission or any member thereof or any party to the action or proceeding may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the state

to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state, and to that end may compel the attendance of witnesses and the production of books, documents, papers and accounts.

§ 78. Oaths, subpoenas, production of books and papers—Fees and mileage of witnesses.—The commission and each member thereof, its secretary and referees, shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state. Each witness who shall appear, by order of the commission or a member thereof, or a referee appointed thereby, shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the commission. When any witness who has not been required to attend at the request of any party is subpoenaed by the commission his fees and mileage may be paid from the funds appropriated for the use of the commission in the same manner as other expenses of the commission are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the commission, may, at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to attend before the commission, member thereof, or referee as directed in the subpoena. All fees or mileage to which any witness is entitled under the provisions of this section may be collected by action therefor instituted by the person to whom such fees are payable.

§ 79. Superior court to enforce orders—Order to attend—Remedy cumulative.—The superior court in and for the county, or city and county, in which any inquiry, investigation, hearing or proceeding may be held by the commission or any member thereof or referee appointed thereby, shall have the power to compel the attendance of witnesses, the giving of testimony and the production of papers, including books, accounts and documents, as required by any subpoena issued by the commission or member thereof or referee. The commission or the member thereof or the referee, before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the superior court in and for the county, or city and county, in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witness, or the production of said papers, and that the witness has been subpoenaed in the manner prescribed in this act, and that the witness has failed and refused to attend or produce the papers required by the subpoena, or has refused to answer questions propounded to him in the course of such proceeding, and ask an order of said court, compelling the witness to attend and testify or produce said papers before the commission. The court, upon the petition of the commission or such member thereof or referee, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show

cause why he had not attended and testified or produced said papers before the commission, member thereof or referee. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission or member thereof or referee, the court shall thereupon enter an order that said witness appear before the commission or member thereof or referee at a time and place to be fixed in such order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court. The remedy provided in this section is cumulative, and shall not be construed to impair or interfere with the power of the commission or a member thereof to enforce the attendance of witnesses and the production of papers, and to punish for contempt in the same manner and to the same extent as courts of record.

§ 80. (a) **Plenary powers of the Commission.**—The commission is hereby vested with full power, authority and jurisdiction to do and perform any and all things, whether herein specifically designated, or in addition thereto, which are necessary or convenient in the exercise of any power, authority or jurisdiction conferred upon it under this act.

(b) **Issuance of writs.**—The commission and each member thereof shall have power to issue writs of summons, warrants of attachment, warrants of commitment and all necessary process in proceedings for contempt, in like manner and to the same extent as courts of record. The process issued by the commission or any member thereof shall extend to all parts of the state and may be served by any persons authorized to serve process of courts of record, or by any person designated for that purpose by the commission or any member thereof. The person executing any such process shall receive such compensation as may be allowed by the commission, not to exceed the fees now prescribed by law for similar services, and such fees shall be paid in the same manner as provided herein for the fees of witnesses.

REHEARINGS

§ 81. (a) **Rehearings.**—Any party or person aggrieved directly or indirectly by any final order, decision, award, rule or regulation of the commission, made or entered under any provision contained in this act, may apply to the commission for a rehearing in respect to any matters determined or covered by such final order, decision, award, rule or regulation and specified in the application for rehearing within the time and in the manner hereinafter specified, and not otherwise.

(b) **Must precede appeal.**—No cause of action arising out of any such final order, decision or award shall accrue in any court to any person until and unless such person shall have made application for such rehearing, and such application shall have been granted or denied; provided, that nothing herein contained shall be construed to prevent the enforcement of any such final order, decision, award, rule or regulation in the manner provided in this act.

(c) **Matter to be contained in application for rehearing.**—Such application shall set forth specifically and in full detail the grounds upon which the applicant considers said final order, decision, award, rule or regulation is unjust or unlawful, and every issue to be considered by the commission. Such application must be verified upon oath in the same manner as required for verified pleadings in the courts of record and must contain a general statement of any evidence or other matters upon which the applicant relies in support

thereof. The applicant for such rehearing shall be deemed to have finally waived all objections, irregularities and illegalities concerning the matter upon which such rehearing is sought other than those set forth in the application for such rehearing.

(d) Service—Answer.—A copy of such application for rehearing shall be served forthwith on all adverse parties, if any, and any such adverse party may file an answer thereto within ten days thereafter. Such answer must likewise be verified. If there are no adverse parties, such application may be heard ex parte or the commission may require the application for rehearing to be served on such parties as may be designated by it.

(e) Action on application.—Upon filing of an application for a rehearing, if the issues raised thereby have theretofore been adequately considered by the commission, it may determine the same by confirming without hearing its previous determination, or if a rehearing is necessary to determine the issues raised, or any one or more of such issues, the commission shall order a rehearing thereon and consider and determine the matter or matters raised by such application. Notice of the time and place of such rehearing shall be given to the applicant and the adverse parties, if any, and to such other persons as the commission may order.

(f) Commission may modify original order—Application deemed denied.—If after such rehearing and a consideration of all the facts, including those arising since the making of the order, decision or award involved, the commission shall be of the opinion that the original order, decision or award or any part thereof, is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change or modify the same. An order, decision or award made after such rehearing, abrogating, changing or modifying the original order, decision or award shall have the same force and effect as an original order, decision or award, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order, decision or award, unless so ordered by the commission. An application for a rehearing shall be deemed to have been denied by the commission unless it shall have been acted upon within thirty days from the date of filing; provided, however, that the commission may upon good cause being shown therefor, extend the time within which it may act upon such application for rehearing for not exceeding thirty days.

§ 82. (a) Grounds for rehearing in compensation cases.—At any time within twenty days after the service of any final order or decision of the commission awarding or denying compensation, or arising out of or incidental thereto, any party or parties aggrieved thereby may apply for such rehearing upon one or more of the following grounds and upon no other grounds:

- (1) That the commission acted without or in excess of its powers.
- (2) That the order, decision or award was procured by fraud.
- (3) That the evidence does not justify the finding of fact.
- (4) That the applicant has discovered new evidence, material to him, and which he could not, with reasonable diligence have discovered and produced at the hearing.
- (5) That the findings of fact do not support the order, decision or award.

(b) Removal of limitations on Commission.—Nothing contained in this section shall, however, be construed to limit the right of the commission, at any time within two hundred forty-five weeks from the date of its award,

and from time to time, after due notice and upon the application of any party interested, to review, diminish or increase, within the limits provided by this act, any compensation awarded upon the grounds that the disability of the person in whose favor such award was made has either increased or diminished or terminated.

§ 83. (a) Grounds for rehearing in other matters.—At any time within twenty days after the service of any other final order, decision, rule or regulation made by the commission under the provisions of this act, any party or parties, person or persons aggrieved thereby or otherwise affected, directly or indirectly, may apply for such rehearing upon one or more of the following grounds and upon no other grounds:

- (1) That the commission acted without or in excess of its powers.
- (2) That the order or decision was procured by fraud.
- (3) That the order, decision, rule or regulation is unreasonable.

(b) Removal of limitation on Commission.—Nothing contained in this section shall be construed to limit the right of the commission, at any time and from time to time, to adopt new or different rules or regulations or new or different standards of safety, or to abrogate, change or modify any existing rule, regulation, or standard, or any part thereof, or to deprive the commission of continuing jurisdiction over the same or to prevent the enforcement in the manner provided by this act, of any rules, regulations or standard of the commission, or any part thereof, when so adopted, or changed, or modified.

REVIEW OF AWARD OR ORDER

§ 84. (a) Application for review.—Within thirty days after the application for a rehearing is denied, or, if the application is granted, within thirty days after the rendition of the decision on the rehearing, any party affected thereby may apply to the supreme court of this state or to the district court of appeal of the appellate district in which such person resides, for a writ of certiorari or review (hereinafter referred to as a writ of review) for the purpose of having the lawfulness of the original order, decision or award or the order, decision or award on rehearing inquired into and determined.

(b) Return of writ.—Such writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the commission to certify its record in the case to the court. On the return day the cause shall be heard in the court unless for good cause the same be continued. No new or additional evidence may be introduced in such court but the cause shall be heard on the record to the commission as certified to by it. The review shall not be extended further than to determine whether not:

(1) Grounds for review.—The commission acted without or in excess of its powers.

(2) The order, decision or award was procured by fraud.

(3) The order, decision, rule or regulation is unreasonable.

(4) If findings of fact are made, whether or not such findings of fact support the order, decision or award under review.

(c) Findings to be conclusive.—The findings and conclusions of the commission on questions of fact shall be conclusive and final and shall not be subject to review; such questions of fact shall include ultimate facts and the findings and conclusions of the commission. The commission and each party to the action or proceeding before the commission shall have the right to ap-

pear in the review proceeding. Upon the hearing the court shall enter judgment either affirming, modifying or setting aside the order, decision or award.

(d) Code of Civil Procedure to apply.—The provisions of the Code of Civil Procedure of this state relating to writs of review shall, so far as applicable and not in conflict with this act, apply to proceedings in the courts under the provisions of this section. No court of this state (except the supreme court and the district courts of appeal to the extent herein specified) shall have jurisdiction to review, reverse, correct or annul any order, decision or award of the commission or to suspend or delay the operation or execution thereof, or to restrain, enjoin or interfere with the commission in the performance of its duties; provided, that a writ of mandamus shall lie from the supreme court or the district courts of appeal in all proper cases.

§ 85. Suspension of order.—(a) The filing of an application for a rehearing shall have the effect of suspending the order, decision, award, rule or regulation affected, in so far as the same applies to the parties to such application, unless otherwise ordered by the commission, for a period of ten days, and the commission may, in its discretion and upon such terms and conditions as it may by order direct, stay, suspend or postpone the same during the pendency of such rehearing.

(b) The filing of an application for, or the pendency of, a writ of review, shall not of itself stay or suspend the operation of the order, decision, award, rule or regulation of the commission subject to review, but the court before which such application is filed may, in its discretion, stay or suspend in whole or in part the operation of the order, decision, award, rule or regulation of the commission subject to review upon such terms and conditions as it may by order direct.

§ 86. (a) Act to be liberally construed.—Whenever this act, or any part or section thereof, is interpreted by a court, it shall be liberally construed by such court.

(b) If section be declared unconstitutional.—If any section, subsection, subdivision, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, subdivision, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses or phrases is declared unconstitutional.

(c) Not to apply to interstate commerce.—This act shall not be construed to apply to employers or employments which, according to law, are so engaged in interstate commerce as not to be subject to the legislative power of the state or to employees injured while they are so engaged, except in so far as this act may be permitted to apply under the provisions of the Constitution of the United States or the acts of congress.

§ 87. (a) Election of compensation by persons not covered by preceding sections.—Any employer, having in his employment any employee not included within the term "employee" as defined by section fourteen of this act or not entitled to compensation under this act, and any such employee, may, by their joint election, elect to come under the compensation provisions of this act in the manner hereinafter provided.

(b) Method of making such election.—Such election on the part of the employer shall be made by filing with the commission a written statement to

the effect that he accepts the compensation provisions of this act, which, when filed, shall operate, within the meaning of section twelve of this act, to subject him to the compensation provisions of this act, and of all acts amendatory thereof, for the term of one year from the date of filing, and thereafter without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or any succeeding year, file in the office of the commission a notice in writing that he withdraws his election. Such acceptance shall not be held to include employees whose employment is both casual and not in the usual course of the trade, business, profession or occupation of the employer, unless expressly mentioned therein.

(c) Their employés presumed to be under compensation unless giving contrary notice.—Any employee in the service of any such employer, shall be deemed to have accepted, and shall, within the meaning of section twelve of this act, be subject to the compensation provisions of this act, and of any act amendatory thereof, if, at the time of the accident for which liability is claimed:

(1) The employer charged with such liability is subject to the compensation provisions of this act, whether the employé has actual notice thereof or not; and

(2) Such employé shall not, at the time of entering into his contract of hire, have given to his employer notice in writing that he elects not to be subject to the compensation provisions of this act; or, in the event that such contract of hire was made in advance of the election by the employer, such employé shall have given to his employer notice in writing that he elects to be subject to such provisions, or without giving either of such notices, shall have remained in the service of such employer for thirty days after the employer has filed his election.

§ 88. Annual report to governor.—The commission shall, not later than the first day of December of each calendar year, subsequent to the year 1913, make a report to the governor of the state covering its entire operations and proceedings for the previous fiscal year, with such suggestions or recommendations as it may deem of value for public information. Such report shall be printed and a copy thereof furnished to all applicants within this state.

§ 89. Appropriation.—The sum of one hundred eighty-seven thousand four hundred seventy dollars is hereby appropriated out of any money in the state treasury, not otherwise appropriated, to be used by the Industrial Accident Commission in carrying out the purposes of this act, and the controller is hereby directed to draw his warrant on the general fund from time to time in favor of said Industrial Accident Commission for the amounts expended under its direction, and the treasurer is hereby authorized and directed to pay the same.

§ 90. Acts repealed.—All acts or parts of acts inconsistent with this act are hereby repealed.

§ 91. Not retroactive.—The compensation provisions of this act shall not apply to any injury sustained prior to the taking effect thereof.

§ 92. When effective.—This act shall take effect and be in force on and after the first day of January, A. D. 1914.

COLORADO

WORKMEN'S COMPENSATION ACT

Section

1. Administration of Act.
2. "Commission."
3. Singular and plural.
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WORKMEN'S COMPENSATION ACT

(*Sess. Laws 1915, S. B. No. 99, c. 179, p. 515.*)

An Act to determine and define the relations between employer and employee, providing for safe and hygienic conditions and for compensation for accidental injury to or death of employees; for insurance of such compensation; establishing an industrial commission, prescribing its powers, and providing for review of its proceedings; making an appropriation to carry out the provisions of this act; providing penalties for violation of this act; repealing all acts and parts of acts in conflict with this act, and declaring this act to be necessary for the immediate preservation of public peace, health and safety.

Be it enacted by the General Assembly of the State of Colorado:

§ 1. **Administration of Act.**—The Industrial Commission of Colorado created by the act of the General Assembly of Colorado, which commission for the purpose of this Act shall be a body politic and corporate under the name prescribed by said Act, shall enforce and administer the provisions of this Act and wherever the word commission is used in this Act it shall be construed to mean the Industrial Commission of Colorado. The said Commission, in the administration of this Act shall be governed by its provisions if there be conflict between the same and the provisions of the Act creating said Commission.

§ 2. **"Commission."**—The term "Commission" when used in this Act shall mean The Industrial Commission of Colorado.

§ 3. **Singular and plural.**—Unless the context otherwise requires, a word used in this Act in the singular number shall also include the plural.

§ 4. **Terms defined.**—The following terms as used in this Act shall be construed and have the following meaning, unless otherwise specifically defined in the context:

(a) **"Order."**—The term "order" shall mean and include any decision, classification, rate, rule, regulation, direction, requirement or standard of the Commission or any other determination arrived at or decision made by such Commission.

(b) **"Place of employment."**—The term "place of employment" shall mean and include every place whether indoors or out or underground, and the premises appurtenant thereto, where either temporarily or permanently any industry, trade or business is carried on, or where any process or operation, directly or indirectly relating to any industry, trade or business, is carried on, and where any person is directly or indirectly employed by another for direct or indirect gain or profit, except as otherwise expressly provided in this Act.

(c) **"Employment."**—The term "employment" shall mean and include any trade, occupation or process of manufacture, or any method of carrying on such trade, occupation, or process of manufacture in which any person may be engaged, except as otherwise expressly provided in this Act.

(d) **"Employer"—Who and what included.**—The term "employer" shall mean and include:

I. The state, and each county, city, town, irrigation and school district therein, and all public institutions and administrative boards thereof.

II. Every person, association of persons, firm and private corporation (including any public service corporation), personal representatives, assignee, trustee and receiver, who has four (4) or more persons regularly engaged in the same business or employment, (except as otherwise expressly provided in this Act), in service under any contract of hire, express or implied, and who, at or prior to the time of the accident to the employee, for which compensation under this Act may be claimed, shall, in the manner provided in this Act, have elected to become subject to the provisions of this Act and who complies with the provisions hereof respecting insurance, and who shall not, prior to such accident, have effected a withdrawal of such election in the manner provided in this Act.

III. This Act is not intended to apply to employers of private, domestic servants or farm and ranch labor; nor to employers who employ less than four employees regularly in the same business, or in or about the same place of employment; provided, that any such employer may elect to accept the provisions of this Act, in the manner provided herein, in which event he and his employees shall be subject to and entitled to all the provisions of this Act.

IV. The provisions of this act shall not apply to common carriers engaged in interstate commerce, nor to their employees.

(e) **"Employee"—Who included.**—The term "employee" shall mean and include:

I. Every person in the service of the state, or of the county, city, town, irrigation or school district therein, or of any public institution or administrative board thereof, under any appointment or contract of hire, express or implied, except an elective official of the state, or of any county, city, town, irrigation or school district therein, or of any public institution or administrative board thereof. Policemen and firemen shall be deemed employees, within the meaning of this paragraph; provided, that any policeman or fireman claiming compensation under this act shall have deducted from such compensation any sum which such policeman or fireman may receive from any pension or any benefit fund to which the municipality may contribute.

II. Every person in the service of any other person, association of persons, firm, private corporation, including any public service corporation, personal representative, assignee, trustee, or receiver under any contract of hire, express or implied, including aliens, and also including minors who are legally permitted to work under the laws of this state (who, for the purposes of this act, shall be considered the same, and shall have the same power of contracting with respect to their employment, as adult employees), but not including any person whose employment is but casual, or who is expressly excluded from this act or whose employment is not in the usual course of trade, business, profession or occupation of his employer.

(f) **Dependency—Conclusive presumption—Determination—Relationship—Death benefits.**—The following shall be conclusively presumed to be solely and wholly dependent for support upon a deceased employee:

I. The widow only if living with the deceased, or actually dependent, wholly or partially, upon him at the time of his accident.

II. The widower only if incapable of self support, and actually dependent, wholly or partially, upon deceased at the time of her accident.

III. A child or children under the age of eighteen years, (or over said age, if physically or mentally incapacitated from earning) actually dependent upon the parent with whom he is, or they are, living at the time of the death of such parent, there being no surviving and dependent parent. In case there is more than one child thus dependent, the death benefit shall be divided between such dependents in such proportion as may be determined by the commission after considering the ages of such dependents, and other facts bearing upon such dependency.

IV. In all other cases, questions of entire or partial dependency shall be determined in accordance with the facts, as the same may be at the time of the accident to the employee; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them; and persons partially dependent, if any, shall receive no part thereof; but if there is no one wholly dependent, and there is more than one person partially dependent, the death benefit shall be divided among them, according to the relative extent of their dependency.

V. No person shall be considered a dependent unless a member of the family of the deceased employee, or one who bears to him the relation of surviving spouse, or lineal descendant, or ancestor, or brother or sister. A child, within the meaning of this act, shall include a posthumous child, and a child legally adopted prior to the injury.

VI. Questions as to who constitute dependents, and the extent of their dependency shall be determined as of the dates as herein provided and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions, and the death benefit shall be directly payable to the dependent or dependents entitled thereto, or their legal representatives; provided, notwithstanding, that when a right to a death benefit shall have become fixed, it shall cease upon the happening of any one of the following contingencies:

(1) Upon the marriage of the widow or widower.

(2) When a child reaches the age of eighteen years, unless said child at such time is physically or mentally incapacitated from earning.

(3) Upon the death of any dependent.

VII. Death benefits under this act to dependents who are non-residents of the United States shall be one-third of the amount which a dependent who is a resident of the United States might receive; provided, that in no event shall death benefits to dependents who are non-residents of the United States exceed the aggregate sum of one thousand dollars.

VIII. No dependent of an injured employee shall be deemed, during the life of such employee, a party in interest to any proceeding by him for the enforcement or collection of any claim for compensation, nor as respects the compromise thereof by such employee.

(g) Average weekly wage—Determination.—The average weekly wage of the injured person at the time of the injury shall be taken as the basis upon which to compute the benefits; such average weekly earnings shall be one fifty-second (1-52) of the average annual earnings of the employee.

I. The average weekly earnings for all employees shall be taken at not less than the minimum nor more than the maximum provided in this act. Be-

tween said limits, said average annual earnings shall be determined as follows:

II. If the injured employee has worked in the employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earning shall consist of three hundred times the average daily wage or salary which he has earned in such employment during the days when so employed.

III. If the injured employee shall not have worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of the average daily wage or salary which such employee shall have earned in such employment during days when so employed, multiplied by the number of days that he shall have worked in all employments during said year.

(h) Same—Alternative method.—In cases where the foregoing methods of arriving at the average annual earnings of the injured employee cannot reasonably and fairly be applied, such average annual earnings shall be taken at such sum as, having regard to the previous earnings of the injured employee, and of other employees of the same or most similar class, working in the same or most similar employment, in the same or a neighboring locality shall reasonably represent the average annual earning capacity of the injured employee at the time of the accident, in the employment in which he was working at such time.

I. If an employee is a minor, and is permanently disabled, his weekly earnings shall be determined on the basis of the earnings that such minor, if not disabled, would probably earn. If it is established that the injured employee was of such age and experience when injured as that under natural conditions his wages would be expected to be increased, the fact may be considered in arriving at his average weekly wage.

II. The fact that an employee has suffered a previous disability, or received compensation therefor, shall not preclude compensation for a later injury, or for death; but in determining compensation for the later injury, or death, his average annual earnings shall be such sum as will reasonably represent his average annual earning capacity at the time of the later injury, in the employment in which he was working at such time, and shall be arrived at according to, and subject to, the limitations of the provisions of this section.

(i) Weekly loss in wages.—The weekly loss in wages referred to in this act shall consist of such percentage of the average weekly earnings of the injured employee, computed according to the provisions of this act, as shall fairly represent the proportionate extent of the impairment of his earning capacity in the employment in which he was working at the time of the accident and other suitable employments, the same to be fixed as of the time of the accident, but to be determined in view of the nature and extent of the injury.

(j) "Safe"—"Safety."—The term "safe" or "safety" as applied to an employment or place of employment, shall mean such freedom from danger to the life, health and safety of employees, and such reasonable means of notification, egress and escape in case of fire, as the nature of the employment will reasonably permit.

§ 5. Action for damages—Abolition of defenses.—In an action to recover damages for a personal injury sustained within this state by an em-

ployee on and after the 1st day of August, 1915, while engaged in the line of his duty as such, or for death resulting from personal injuries so sustained, in which recovery is sought upon the ground of want of ordinary care of the employer, or of the officer, agent, or servant of the employer, it shall not be a defense:

(a) That the employee, either expressly or impliedly, assumed the risk of the hazard complained of as due to the employer's negligence;

(b) That the injury or death was caused, in whole or in part, by the want of ordinary care of a fellow servant.

(c) That the injury or death was caused, in whole or in part by the want of ordinary care of the injured employee where such want of care was not willful.

§ 6. Exclusiveness of remedy.—Any employer who has elected to and has complied with the provisions of this act, including the provisions relating to insurance, shall not be subject to the provisions of Section 5 of this Act; nor shall such employer be subject to any other liability whatsoever for the death of or personal injury to any employee, except as in this Act provided; and all causes of action, actions at law, suits in equity and proceedings whatever, and all statutory and common law rights and remedies for and on account of such death or of personal injury to any such employee are hereby abolished except as in this Act provided.

7. Defenses on nonelection of employé.—If an employer has elected to and has complied with the provisions of this Act, and an action is brought against such employer to recover damages for personal injuries or death sustained by an employee who has elected not to come under this Act, then such employer shall have all the defenses to such an action which he would have had if this Act and that certain other Act entitled: "An Act Concerning Assumption of Risk," being Chapter 43, upon page 115 of the Session Laws of 1913, had not been enacted.

§ 8. Right to compensation—Conditions precedent.—The right to the compensation provided for in this Act, in lieu of any other liability whatsoever, to any and all persons whomsoever, for any personal injury or death accidentally sustained on and after August 1st, 1915, shall obtain in all cases where the following conditions concur:

I. Where, at the time of the accident, both employer and employee are subject to the provisions of this Act.

II. Where, at the time of the accident, the employee is performing service arising out of and in the course of his employment.

III. Where the injury is proximately caused by accident arising out of and in the course of his employment, and is not intentionally self-inflicted or intentionally inflicted by another.

§ 9. Election or acceptance of employer—Withdrawal.—Such election on the part of any employer including the employer of private domestic servants, farm and ranch laborers or of three or less employees may be made by filing with the Commission a written statement to the effect that he accepts the provisions of this Act, the filing of which statement shall operate to subject such employer to the provisions of this Act for the term of one (1) year from the date of filing such statement, and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or any succeed-

ing year, file in the office of said Commission a notice in writing to the effect that he desires to withdraw his election to be subject to the provisions of this Act.

II. Presumption of acceptance—Proviso.—On and after August 1, 1915, every employer of four or more employees, not including private domestic servants and farm and ranch laborers, engaged in a common employment, shall be conclusively presumed to have accepted the provisions of this Act, unless, prior to that date, such employer shall have filed with the Commission a notice in writing to the effect that he elects not to accept the provisions of this Act; and the employer shall have the right to withdraw his election at the time and in the manner above specified.

Provided, That any employer commencing business subsequent to August 1st, 1915, may make his election not to become subject to the provisions of this Act at any time prior to becoming an employer of four or more employees, in a common employment, exclusive of private domestic servants and farm and ranch laborers, by giving written notice as above provided. Such employer may withdraw from the provisions of said sections of this Act at the expiration of one year, or at the expiration of any succeeding year, in the manner provided in this Act.

III. Notice.—Every employer, whether electing to accept or reject the provisions of this Act, shall cause printed notice thereof to be posted in and about his place of employment in a conspicuous manner and in sufficient places frequented by his employees, as to reasonably notify such employees that he is or is not, as the case may be, subject to the provisions of this Act, and shall likewise cause similar notice to be given of the filing of any change of such election on his part.

§ 10. Insurance—Methods.—Any employer electing to become subject to the provisions of this Act, shall secure compensation to his employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation in the state compensation insurance fund, or,

2. By insuring and keeping insured the payment of such compensation with any stock or mutual corporation authorized to transact the business of workmen's compensation insurance in this state. If insurance be so effected in such a corporation or mutual corporation the employer shall forthwith file with the Commission, in form prescribed by it, a notice specifying the name of such insurance corporation or mutual corporation together with a copy of the contract or policy of insurance.

3. By furnishing satisfactory proof to the Commission of his financial ability to pay such compensation direct to his employees as hereinafter provided.

§ 11. Same—Insurance companies—Policies.—Every insurance corporation or mutual corporation, except the State Compensation Insurance Fund as administered by the Industrial Commission of Colorado, authorized to transact business in this state, which insures employers against liability for compensation under the provisions of this Act, shall file with the Commission its classification of risks and premiums relating thereto, and any subsequent proposed classification of risks and premiums, together with basic rates and schedules, if a system of schedule rating be in use, none of which shall take effect until the Commission shall have approved the same as adequate for the risks to which they respectively apply. The Commission may withdraw its approval of any premium rate or schedule made by any insurance corporation

or mutual corporation if, in its judgment, such premium rate or schedule is inadequate to provide the necessary reserves.

Every contract for the insurance of compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this Act, and all provisions thereof in such insurance policy inconsistent with the provisions of this Act shall be void.

Every contract insuring against liability for compensation, or insurance policy evidencing the same, must contain a clause to the effect that the insurance carrier shall be directly and primarily liable to the employee, and in the event of his death, to his dependents, to pay the compensation, if any, for which the employer is liable; that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this Act, be jurisdiction of the insurance carrier and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer under the provisions of this Act.

Such policy must also provide that the employee shall have a first lien upon any amount which shall become owing on account of such policy to the employer from the insurance carrier and that in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the employee or his dependents, the said insurance carrier may and shall pay the same directly to the said employee or his dependents, thereby discharging to the extent of such payment the obligations of the employer to the employee, and such policy shall not contain any provisions relieving the insurance carrier from payment when the employer becomes insolvent or is discharged in bankruptcy, or otherwise, during the period that the policy is in operation or the compensation remains owing.

§ 12. Acceptance of Act by employé.—Any employee may become subject to the provisions of this Act, and shall be deemed to have accepted, and shall be subject to the provisions thereof if at the time of the accident upon which liability is claimed:

(a) His employer is subject to the provisions of this Act, when the employee has actual notice thereof; and if,

(b) Such employee shall not, at the time of entering into his contract of hire, expressed or implied with such employer, have given to his employer notice in writing that he elects not to be subject to the provisions of this Act; or,

(c) Without giving such notice, shall have remained in the service of such employer for seven days after such employer has filed with the Commission his election as in this Act provided and has become subject hereto; Provided, the notices required by this Act shall have been posted in and about the place of employment of such employer as required by law, in which event said employee shall be conclusively presumed to have actual notice thereof.

§ 13. Surrender of right to other remedies.—Such election and compliance with the provisions of this Act, including the provisions for insurance, shall be and be construed to be a surrender by the employer and employee of their rights to any other method, form, or amount of compensation or determination thereof, or to any cause of action, action at law, suit in equi-

ty or statutory or common law right or remedy or proceeding whatever for or on account of such personal injuries or death of such employee than as provided in this Act, and shall be an acceptance of all the provisions of this Act, and shall bind the employee himself and, for compensation for his death, shall bind his personal representatives, his widow and next kin, as well as the employer, and those conducting his business during bankruptcy or insolvency.

§ 14. Records and reports.—Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within ten days after the occurrence of an accident resulting in personal injury, a report thereof shall be made in writing to the Commission upon blanks to be procured from the Commission for that purpose. Such report shall contain the name and nature of the business of the employer, the location of his establishment or place of work, the name, address and occupation of the injured employee, and shall state the time, the nature and cause of injury and such information as may be required by the Commission. Any employer who refuses or neglects to make any report required by this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars for each such offense.

§ 15. Access of Commission—Places of employment.—The Commission, or its agents, may enter any place of employment for the purpose of collecting facts and statistics, examining the provisions made for the health, protection and safety of the employees, and bringing to the attention of every employer any law or any rule, order or requirement of the Commission, and any failure on the part of any employer to comply therewith.

§ 16. Same—Books and records—Penalty.—All books, records and payrolls of employers, showing or reflecting in any way upon the amount of wage expenditure of such employers, and other data, facts and statistics appertaining to the purposes of this Act, shall always be open for inspection by the Commission or any of its agents, for the purpose of ascertaining the correctness of the reported wage expenditure, the number of men employed, and such other information as may be necessary for the uses and purposes of the Commission in its administration of this Act.

Any employer who shall refuse to admit the Commission or its duly authorized agents to such place of employment for such purposes shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars.

§ 17. Information furnished Commission—Statement—Witnesses—Penalty.—Every employer shall furnish the Commission, upon request, all information required by it to accomplish the purposes of this Act. In the month of January and July of each year, every employer shall prepare and mail to the Commission, at its main office in the city of Denver, Colorado, a statement containing the following information, viz.: The number of employees employed during the preceding six months' period; the number of such employees employed at each kind of employment; and the aggregate amount of wages paid to such employees, which information shall be furnished on a blank or blanks to be prepared by the Commission; and it shall be the duty of the Commission to furnish such blanks to such employers, free of charge, upon request therefor. Every employer receiving from the Commission any blanks, with directions to fill out the same, shall cause the same

to be properly filled out so as to answer fully and correctly all questions therein propounded, and to give all the information therein sought, or if unable to do so, he shall give in writing good and sufficient reason for such failure. The Commission may require that the information herein required to be furnished shall be verified under oath and shall be returned to the Commission within the period fixed by it or by law. The Commission or any person employed by it for that purpose, shall have the right to examine, under oath, any employee or employer, or the officer, agent or employee thereof, for the purpose of ascertaining any information which such employer or employee is required by this Act to furnish to the Commission. Any person who shall fail or refuse to furnish to the Commission the semi-annual statement herein required, or shall fail or refuse to furnish such other information as may be required by the Commission under authority of this Act, shall, if an employer, be punished by a fine of two hundred dollars, and if an employee, be punished by a fine of twenty-five dollars.

§ 18. Same—Not public—Penalty for divulgence.—The information contained in the semi-annual report provided for in the preceding section, and such other information as may be furnished to the Commission by employers in pursuance of the provisions of this Act, shall be for the exclusive use and information of said Commission in the discharge of its official duties and shall not be open to the public nor be used in any court, in any action or proceeding pending therein, unless the Commission is a party to such action or proceeding; but the information contained on said report may be tabulated and published by the department in statistical form, for the use and information of other state departments and the public. Any person in the employ of the Commission who shall divulge any information secured by him in respect to the transactions, property or business of any employer to any person other than the Commission, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, and shall thereafter be disqualified from holding any appointment or employment with the Commission.

§ 19. Same—Enforcement of subpoena or order.—In case of failure or refusal of any person to comply with the order of the Commission or subpoena issued by it or its agents, or to furnish the statistics, data and information required to be furnished to the Commission by the provisions of this Act, or refuse to permit an inspection as provided in this Act, the district judge of the county in which the person resides, on application of the Commission or any agent appointed by it, shall compel obedience by attachment proceedings or for contempt, as in the case of disobedience of the requirements of subpoena issued from such court on a refusal to testify thereon.

§ 20. State Compensation Insurance Fund.—There is hereby established a fund to be known as the State Compensation Insurance Fund for the benefit of injured and the dependents of killed and injured employees, which shall be administered in accordance with the following provisions, without liability on the part of the State beyond the amount of said fund, collected as provided in this Act.

§ 21. Same—Default—Collection.—If any employer shall be in arrears for more than five days in any payment required to be made by him to the State Compensation Insurance Fund, as provided in this Act, he shall by virtue of such arrearage be in default of such payment, and the amounts due from him shall be collected by civil action against him in the name of the

Commission as plaintiff; and it shall be the duty of the Commission to certify to the Attorney-General of the State the names and residences of all employers known to the Commission to be in default for such payments for a longer period than five days, and the amount due from each such employer, and it shall then be the duty of the Attorney-General forthwith to bring, or cause to be brought against each such employer a civil action in the proper court for the collection of such amount so due and the same when collected, shall be paid into the State Compensation Insurance Fund. While such default continues, such employer shall not be entitled to the benefits of this Act. Such employer's compliance with the provisions of this Act requiring payments to be made to the State Compensation Insurance Fund shall date from the time of the payment of said money to the State Compensation Insurance Fund, and his right to the benefits of the provisions of this Act shall be determined accordingly.

§ 22. Same—Consists of what.—The State Compensation Insurance Fund shall be a continuing fund and shall consist of all premiums received and paid into the said fund for compensation insurance, all property and securities acquired by and through the use of moneys belonging to said fund and all interest earned upon moneys belonging to said fund and deposited or invested, as herein provided. Said fund shall be applicable to the payment of losses sustained on account of compensation and benefit insurance in accordance with the provisions of this Act.

§ 23. Same—Jurisdiction of Commission — Powers of Commission, etc.—The Commission is hereby vested with full power, authority and jurisdiction over the State Compensation Insurance Fund and may do and perform any and all things whether herein specifically designated, or in addition thereto, which are necessary or convenient in the exercise of any power, authority or jurisdiction over said fund in the administration thereof under the provisions of this Act, as fully and completely as the governing body of a private insurance company might or could do, subject however, to all the provisions of this Act.

The Commission shall have full power and authority, and it shall be its duty, to fix and determine the rates to be charged by the State Compensation Insurance Fund for compensation insurance, and to manage and conduct all business and affairs in relation thereto, all of which business and affairs shall be conducted in the name of the Commission, and in that name, without any other name or title, the Commission may:

I. Sue and be sued in all courts of the state in all actions arising out of any act, deed, matter or thing made, omitted, entered into, done, or suffered in connection with the State Compensation Insurance Fund, the administration, management or conduct of the business or affairs relating thereto.

II. Make and enter into contracts of insurance with employers as herein provided, and such other contracts or obligations relating to the state compensation insurance fund as are authorized or permitted under the provisions of this Act, but the Commission shall not, nor shall any officer or employee thereof, be personally liable in its private capacity for or on account of any Act performed or contract or other obligation entered into or undertaken in an official capacity, in good faith and without intent to defraud, in connection with the administration, management or conduct of the State Compensation Insurance Fund, its business or other affairs relating thereto.

III. Contract with physicians, surgeons, and hospitals for medical and surgical treatment and the care and nursing of injured persons entitled to benefits from said fund.

IV. The Commission may employ and maintain in the department a compensation actuary who shall be experienced and skilled and fully competent to perform the duties of the position, and who shall assist in or take charge of the practical operation of the State Compensation Insurance Fund under the general direction of the Commission. The actuary shall receive such salary as may be agreed upon by the Commission.

V. The Commission shall have power, with the approval of the State Auditing Board, to employ during their pleasure such deputies, experts, statisticians, accountants, actuaries, inspectors, clerks and other employees as they may deem necessary to carry out the provisions of this Act or to perform the duties and exercise the powers conferred by law upon the Commission. Such deputies, statisticians, accountants, inspectors, clerks, and all other employees, except experts and actuaries in the employ of the Commission, shall have been for four years prior to such employment or appointment bona fide residents of the State of Colorado, and each and all of them, except only the experts shall, while in the employ of the Commission, devote their entire time to the service of the Commission.

VI. All deputies, statisticians, accountants, actuaries, clerks, experts and all other employees of the Commission shall receive such compensation as may be fixed by law or by the Commission, in conjunction with the state auditing board, and their salaries so fixed, as aforesaid, shall be paid monthly from the funds appropriated for the use of the Commission, after being approved by the Commission, and the state auditing board.

All expenses incurred by the Commission pursuant to the provisions of this Act, including the actual and necessary traveling expenses and other expenses and disbursements of the Commission, its officers and employees, incurred while on business of the Commission, shall be paid from funds appropriated* for the use of the Commission upon claims therefor, itemized and sworn to, made by the person who incurred the same, which shall be allowed by the Commission, subject to the approval of the state auditing board, and is authorized to procure such additional furniture and supplies as may be necessary for such purposes, to be paid for in the same manner as other expenses authorized by this Act.

§ 24. Orders of Commission.—All orders of the Commission shall be valid and in force, and prima facie reasonable and lawful until they are found otherwise in an action brought for that purpose, pursuant to the provisions of this act, or until altered or revoked by the Commission.

§ 25. Same—Validity.—A substantial compliance with the requirements of this Act, shall be sufficient to give effect to the orders or awards of the Commission and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

§ 26. Classification of places of employment—Premiums.—The Commission shall classify the places of employment of employers insured in the State Compensation Insurance Fund into classes in accordance with the nature of the business in which they are engaged and the probable hazard or risk of injury to their employees under existing conditions. It shall deter-

*"Appropriate" in original copy of act.

mine the amount of the premiums or assessments which such employers shall pay to said State Compensation Insurance Fund, and may prescribe when and in what manner such premiums and assessments shall be paid, and may change the amount thereof both in respect to any or all of such employers from time to time, as circumstances may require, and the condition of their respective plants, establishments or places of work in respect to the safety of their employees may justify, but all such premiums or assessments shall be levied on a basis that shall be fair, equitable and just as among such employers.

§ 27. **Same—Subclasses.**—It shall also be its duty to divide each of such classes under said classification into as many sub-classes as may be necessary, upon such terms and conditions as will enable it to determine the risks and fix the rates of premium of the different employers in the same class of employment, with respect to the conditions of said places of employment as regards the several requirements upon which the rates of premium of risks are based and determined, as provided in this Act.

§ 28. **Same—Matters to be considered—Premium rates.**—It shall be the duty of the Commission in the exercise of the powers and discretion conferred upon it by this Act, ultimately to fix and maintain, for each class and sub-class of occupation, the lowest possible rates of premium consistent with the maintenance of a solvent State Compensation Insurance Fund, and the creation and maintenance of a reasonable surplus, after the payment of legitimate claims for injury and death, that may be authorized to be paid from the State Compensation Insurance Fund for the benefit of injured and dependents of killed employees; and, in order that said objects may be accomplished the Commission shall observe the following requirements in classifying occupations and fixing the rates of premium for the risks of the same:

It shall determine and base all rates of premium for said classes and sub-classes and all revisions thereof, upon the following conditions and considerations:

(a) The condition of the place of employment as regards health, safety and protection against accident, and the means and methods of caring for injured persons;

(b) Total payroll, and number of employees in each of said classes and sub-classes;

(c) The loss ratio developed by the sub-class, and by the class as a whole;

(d) The earned premium exposure of the sub-class, and of the class as a whole;

(e) The character of hazard of the sub-class and of the class as a whole;

(f) The number and nature of accidents experienced by the sub-class, and the class as a whole;

(g) The number and nature of accidents experienced by the individual employers;

(h) A reasonable regard for the accident experience of each such employer, and his employees.

But such rates shall take no account of the extent to which the employees in any particular establishment have or have not persons dependent upon them for support; nor of whether such employees have dependents who are nonresidents of the United States; nor of whether such employees are married or single; nor the age of any such employees. The rates so made shall

be that percentage of the payroll of any employer which, on the average, shall produce a sufficient sum:

(1) To carry all claims to maturity; that is to say, the rates shall be based upon the "reserve" and not upon the "assessment" plan;

(2) To produce a reasonable surplus as provided in this Act to cover the catastrophe hazard, and insure the payment to employees and their dependents, of the compensation herein provided.

§ 29. Accounts of premiums—Surplus fund—Purpose.—The Commission shall keep an accurate account of the money paid in premiums by each of the several classes and sub-classes of occupations or industries, and the disbursements on account of injuries and death of employees thereof, and it shall also keep an account of the money received from each individual employer and the amount disbursed from the State Compensation Insurance Fund on account of injuries and death of the employees of such employer.

Ten per cent. of all the money paid into the State Compensation Insurance Fund shall be set aside for the creation of a surplus fund until such surplus fund shall amount to the sum of five hundred thousand dollars, after which time the sum of five per cent. of all money paid into the State Compensation Insurance Fund shall be credited to such surplus fund, until such time as, in the judgment of the Commission, such surplus shall be sufficiently large to guarantee a State Compensation Insurance Fund from year to year.

It is the intention that the amounts raised for such State Compensation Insurance Fund shall ultimately become neither more nor less than to make said fund self-supporting, and the premiums or assessments levied for such purpose shall be subject to readjustment from time to time by the Commission as may become necessary.

§ 30. Collection and disbursement of insurance fund—Rules.—The Commission shall adopt rules and regulations with respect to the collection, maintenance and disbursement of the State Compensation Insurance Fund; one of which rules shall provide that in the event the amount of premium collected from any employer at the beginning of any period of six months, as ascertained and calculated by using the estimated expenditure of wages for the period of time covered by such premium payments as a basis, shall differ from the actual wage expenditure for such six months period, that an adjustment of the amount of such premium shall be made at the end of such six months period and the actual amount of such premium shall be determined in accordance with the amount of the actual expenditure of wages for said period; and, in the event such actual wage expenditure for said period is less than the amount on which such estimated premium was collected, then such employer shall be entitled to have the amount of such difference credited on succeeding premium payments, and should such actual premium, when ascertained as aforesaid, exceed in amount the premium so paid by such employer, at the beginning of such six months period, such employer shall upon being advised of the true amount of such premium due, forthwith pay to the State Treasurer an amount equal to the difference between the amount actually found to be due and the amount paid by him at the beginning of said six months period.

§ 31. Schedule of rates—Readjustment—Balances.—The Commission shall, on or before August 1st, 1915, issue in proper form for distribution, a schedule of rates of premiums to be paid to the State Compensation Insurance Fund by the employers of the several classes and sub-classes, based and

determined as in this Act provided, which rates shall control and govern for the period ending December 31st, 1915.

On the first day of January, 1916, and semi-annually thereafter, a readjustment of the rates shall be made for each of the several classes and subclasses of occupation or industry which, in the judgment of the Commission, have developed an average loss ratio in accordance with the experience of the Commission in the administration of the law as shown by the accounts kept as provided herein.

Should any such accounting show a balance remaining to the credit of any class of occupation or industry, after the above mentioned amounts have been credited to the surplus fund, and after the payment of all awards for injury or death, lawfully chargeable against the same, the premium rate for such class or sub-class shall be reduced; and, each individual member of such class or sub-class who has been a subscriber to the State Compensation Insurance Fund for a period of six months or longer prior to the time of such readjustment, and whose premium or premiums so paid to the State Compensation Insurance Fund and to the surplus fund thereof exceeds the amount of the disbursements from the State Compensation Insurance Fund on account of injuries or death to his employees during such period, shall be entitled to a credit on the installment or installments of premium next due from him, the amount of which credit shall be such proportion of said balance as the amount of his prior paid premiums sustains to the whole amount of said premiums paid by the class or sub-class to which he belongs since the last readjustment of rates, based and determined as provided in this Act.

§ 32. Misrepresentation of payroll—Penalty.—Any employer who intentionally misrepresents to the Commission the amount of payroll upon which the premium under this Act is based, shall pay into the State Compensation Insurance Fund the sum of ten times the amount of the difference in premium paid and the amount such employer should have paid, and shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars.

§ 33. Blank forms.—The Commission shall prepare and furnish at the expense of the State, blank forms of application for benefits or compensation from the State Compensation Insurance Fund, notices to employers, proofs of injury or death, or medical attendance, or employment and wage earnings, and such other blanks as may be deemed proper and advisable, and it shall be the duty of employers to constantly keep on hand a sufficient supply of such blanks, that the same may be readily available.

§ 34. Publication of schedules.—The Commission shall cause to be printed in proper form for distribution to the public proper schedules showing its classification, rates, regulations and rules of procedure, which shall be printed and ready for distribution at least thirty days prior to the date the same are due by law to go into effect, and shall furnish the same to any person upon application therefor, and the fact that such classification, rates, regulations and rules of procedure are printed and ready for distribution to all who apply for the same, shall be a sufficient publication of the same as required by this Act.

§ 35. General orders—When effective.—All general orders shall take effect upon their publication in the semi-annual manual or schedule of rates, rules and regulations issued by the Commissioner.

§ 36. **Enforcement by public officers—Reports.**—It shall be the duty of all officers and employees of the state, the counties and municipalities, upon request of the Commission to enforce in their respective departments, all lawful orders of the Commission in so far as the same may be applicable and consistent with the general duties of such officers and employees, and it shall also be their duty to make to such Commission such reports as it may require concerning matters within their knowledge appertaining to the purposes of this Act, and to furnish to it such facts, data, statistics and information as may from time to time come to them appertaining to the purposes of this Act, and the duties of such Commission thereunder, and particularly such information coming to their knowledge respecting the condition of all places of employment subject to the provisions of this Act, as regards the health, protection and safety of employees, and the hazard of risk of such places of employment.

§ 37. **Investigation of unsafe places of employment.**—Whenever the Commission shall learn, or upon petition by any person be informed, that any employment or place of employment is not safe, it shall proceed summarily with or without notice to make such investigation as may be necessary to determine the matter complained of, as the same may affect the hazard or risk of insurance.

§ 38. **Same—Conducted by agent.**—For the purpose of making any investigation with regard to any employment or place of employment, the Commission shall have power to appoint, by an order in writing, any deputy or any other competent person as an agent whose duties shall be prescribed in such order.

In the discharge of his duties such agent shall have every power whatsoever for obtaining information granted in this Act to the Commission and all powers granted by law to officers authorized to take depositions are hereby granted to such agent.

The Commission may conduct any number of such investigations contemporaneously through different agents; and may delegate to such agents the taking of all testimony bearing upon any investigation or hearing. The decision of the Commission shall be based upon his examination of all testimony and records. The recommendations made by such agents shall be advisory only and shall not preclude any further investigation, or the taking of further testimony, if the Commission so order.

§ 39. **Report of Commission to Governor.**—Annually on or before the 15th day of December, the Commission shall make a report to the governor for the preceding fiscal year, which shall include a statement of the number of awards made by it and a general statement of the causes of accidents leading to the injuries for which the awards were made, a detailed statement of the disbursements from the State Compensation Insurance Fund, the amount credited to the reserve fund, and the condition of the respective funds, together with any other matters which the Commission deems proper to call to the attention of the governor, including any recommendations it may have to make, and it shall be the duty of the Commission from time to time to publish and distribute among employers and employees, such general information as to the business transacted by the State Compensation Insurance Fund as in its judgment may be useful.

§ 40. **Amount of insurance contributions—Upon what based.**—Every employer, insured in the State Compensation Insurance Fund shall contrib-

ute to it in proportion to the annual expenditure of money by said employer for the service of persons engaged in such employment, and the hazard of risk of his employment and place of employment, the amount of such payments and the method of making the same to be determined as in this Act provided.

§ 41. Payment of premiums—Exemption.—Except as hereinafter provided, every employer insured in the State Compensation Insurance Fund shall, in the month of September, 1915, and semi-annually thereafter during January and July of each year, pay into the State Compensation Insurance Fund, in advance, the amount of premium determined and fixed by the Commission for the employment or occupation of such employer for the ensuing period, the amount of which premium to be so paid by each such employer to be determined by the classifications, rules and rates made and published by the Commission; and such employer shall semiannually thereafter pay such further sum of money into the State Compensation Insurance Fund as may be ascertained to be due from him by applying the provisions of this Act and rules and rates of the Commission. Such payment shall be made within the time fixed by the Commission and a receipt or certificate certifying that such payment has been made shall immediately be mailed to such employer by the Commission, which receipt or certificate shall be prima facie evidence of the payment of such premium. Notwithstanding anything in this Act, any employer accepting the provisions thereof, who shall file with the Commission a statement showing his intentions to pay the compensation and benefits herein provided, and furnishing satisfactory proof to the Commission of his solvency, and financial ability to pay the same, and furnish security if the Commission in its discretion deems such security necessary, may on permission granted by the Commission, be permitted to make such payments direct to his employees and their dependents as they may be entitled to receive the same under the provisions of this Act.

Any employer so receiving such permission or who shall insure with any stock or mutual corporation as provided in this Act, shall, during his prompt compliance with the provisions of this Act, and the payment by him of the compensation and benefits therein provided, be relieved from making the payments herein required to be made to the State Compensation Insurance Fund, and shall have the benefits of all the provisions of this Act, as though said employer paid premiums into the State Compensation Insurance Fund as provided by this Act. Such employer shall cause notice of such fact to be given his employees in the manner provided for notice by employers accepting or rejecting the provisions of this Act.

§ 42. Necessity of insuring.—An employer, liable under the provisions of this Act, to pay compensation shall insure payment of such compensation in any company authorized to insure such liability in this State or in the State Compensation Insurance Fund, unless such employer shall be exempted from such insurance by the Commission. The Commission shall, from time to time, require further statement of financial ability of such employer to pay compensation, and may, upon ten (10) days' notice in writing, revoke its order granting such exemption, in which case such employer shall immediately insure his liability.

§ 43. Amount of premiums paid by state or municipality.—The amount of money to be contributed by the state itself, and by each county, city, town, irrigation or school district, or other taxing district of the state,

shall be, unless otherwise provided by law, a sum equal to one per centum of the amount of money expended by the state, and by each county, city, town, irrigation or school district, or other taxing district respectively, during the last preceding fiscal year, for the service of all persons in their employ, who are subject to the provisions of this Act.

§ 44. Payment of state's contribution.—In the month of September, 1915, the auditor of state shall draw his warrant on the state treasurer, in favor of said treasurer or custodian of the State Compensation Insurance Fund, and for deposit to the credit of said fund, for a sum equal to one per centum of the amount of money expended by the state, during the last preceding six months, for the service of persons in its employ, who are subject to the provisions of this Act, which said sums are hereby appropriated and made available for such payments; and thereafter in the months of January and July of each year, such sums of money shall in like manner be paid into the State Compensation Insurance Fund; and it shall be the duty of the Commission to communicate to the General Assembly on the first day of each regular session thereof, an estimate of the aggregate amount of money necessary to be contributed by the state during the two years next ensuing as its proper proportion of the State Compensation Insurance Fund.

§ 45. Lists showing amount due from municipality—Proviso.—By the 15th day of July, 1915, and in the month of December of each year, the state auditor shall prepare a list for each county of the state, showing the amount of money expended by each township, city, town, village, irrigation or school district, or other taxing district therein, for the service of persons in their employ during the fiscal year last preceding the time of preparing such lists; and file a copy of such list with the clerk and recorder of the county for which such a list is made, and copies of all such lists with the state treasurer. Such lists shall also show the amount of money due from the county itself and from each city, town, irrigation or school district and other taxing districts thereof, as its power contribution to the State Compensation Insurance Fund and the aggregate sum due from the county and such taxing districts located therein; provided, however, that should the Commission on or before the first day of December in any year, certify to the state auditor that sufficient money is in the State Compensation Insurance Fund to the credit of any county or counties to provide for the payment of compensation to the injured and to the dependents of killed employees of such county or counties, and the several taxing districts therein for the ensuing year, the state auditor shall not prepare and file with the county clerks and the state treasurer said list or lists for such county or counties specified in such certificate; and it shall be the duty of the Commission to make and file such certificate with the state auditor whenever in its judgment there is sufficient money in the State Compensation Insurance Fund to the credit of any county or counties to provide for the probable disbursement required to be made to the injured and to the dependents of killed employees of such county or counties and the several taxing districts therein for the ensuing year.

§ 46. Payment by municipality.—During the month of September, 1915, and in January and July of each year following the filing with him of the lists mentioned in the last preceding section hereof, the clerk and recorder of each county shall issue his warrant in favor of the state treasurer on the county treasurer of his county for the aggregate amount due from such

county and from the taxing districts therein, to the State Compensation Insurance Fund, and the county treasurer shall pay the amount called for by such warrant from the county treasury, and the county clerk and recorder shall charge the amount so paid to the county itself and the several taxing districts therein as shown by such lists; and the state treasurer shall immediately on receiving such money, convert the same into the State Compensation Insurance Fund.

§ 47. Report of state treasurer.—In October, 1915, and in February of each year thereafter the state treasurer shall certify to the Commission the amount of money that has been paid to him for credit to the State Compensation Insurance Fund as provided in this Act and the amount paid by the state itself, and by each county, city, town, irrigation or school district therein, and at the same time shall certify to the Commission the name of such as may have made default in the payments thereinbefore provided, and the respective amounts for which they are in default. When any default is made in the payment of the sums hereinbefore required to be contributed to the State Compensation Insurance Fund, or when any official fails, neglects or refuses to perform any act or acts required to be performed by him with reference to the making of such payments, it shall be the duty of the Commission forthwith, to institute the proper proceedings in court to compel such payment or payments to be made. The Commission shall keep a separate account of the money paid into the State Compensation Insurance Fund by the state and by its political sub-divisions as hereinbefore provided, and the disbursements made therefrom on account of the injuries to and death of public employees, subject to the provisions of this Act.

§ 48. Exemption of municipality.—Provided, any county, city, town, village, irrigation district, school district or other taxing district therein desiring to be exempted from insuring its liability for compensation shall make application to the Commission, showing its solvency and financial ability to pay such compensation, whereupon the Commission, by written order, may make such exemption. The Commission may from time to time require further statement of financial ability of such employer to pay compensation and may upon thirty days' notice in writing, revoke its order granting such exemption, in which case such employer shall immediately insure its liability.

§ 49. Disbursement of fund to employés or dependents.—The Commission shall disburse the State Compensation Insurance Fund to such employees, of such employers as have paid into said fund the premiums applicable to the classes to which they belong, who met with accidents arising out of and in the course of their employment, wheresoever such injuries have occurred, or to their dependents in case death has ensued, and shall furnish such medical, surgical, nurse and hospital care and attention or funeral expenses as are provided by this Act. The Commission shall have full power to adopt rules and regulations with respect to furnishing such medical and hospital service and medicine, as provided for in Section 50, to injured employees entitled thereto, out of the State Compensation Fund, and the same shall be paid for as in this Act provided for compensation and benefits.

§ 50. Medical, surgical and hospital expense.—Every employer, regardless of his method of insurance, shall furnish such medical, surgical and hospital treatment, medicines, medical and surgical supplies, crutches and apparatus, as may be reasonably needed at the time of the injury and thereafter

during the disability, but not exceeding thirty days and one hundred dollars in value, to cure and relieve from the effects of the injury; provided, that medical, surgical and hospital treatment, payment for which is provided for in any plan in force between an employer and his employees at the time of the enactment of this Act or which is thereafter agreed to by employer and employee, shall be deemed a full compliance with the requirements of this section, and shall be received by the employee in full accord and satisfaction thereof.

§ 51. Death benefit—Where no dependent—When payable.—If the deceased employee leaves no person dependent upon him for support, and the accident proximately causes death, the death benefit shall consist of the reasonable expenses of his burial, not exceeding one hundred dollars (\$100.00).

Death benefit shall be paid in monthly installments corresponding in amount to fifty (50) per cent. of the average weekly earnings of the employee until otherwise ordered by the Commission.

§ 52. Disability indemnity—Waiting period—Hernia.—If the accident causes disability, a disability indemnity shall be payable as wages upon the twenty-ninth day after the injured employee leaves work as the result of the injury, and thereafter regularly but not less frequently than once in each calendar month, unless otherwise ordered by the Commission subject, however, to the following limitations:

(a) If the period of disability does not last longer than three weeks from the day the employee leaves work as the result of the injury, no disability indemnity whatever shall be recoverable except the disbursement in this Act provided for medical, nurse and hospital services and medicines; nor in any case unless the Commission has actual knowledge of the injury or is notified thereof within the period specified in this Act.

(b) If the period of disability lasts longer than three weeks from the day the employee leaves work as the result of injury, no disability indemnity shall be recoverable for the first three weeks of disability.

A workman in order to be entitled to compensation for hernia must clearly prove: (1) That the hernia is of recent origin, (2) that its appearance was accompanied by pain, (3) that it was immediately preceded by some accidental strain suffered in the course of the employment, and (4) that it did not exist prior to the date of the alleged injury. If a workman, after establishing his right to compensation for hernia as above provided, elects to be operated upon, a special operating fee of not to exceed fifty dollars shall be paid by the employer, the insurer, or the Commission, as the case may be. In case such workman elects not to be operated upon, and the hernia becomes strangulated in the future, the results from such strangulation will not be compensated.

§ 53. Temporary disability.—In case of temporary disability of more than three weeks' duration, the employee shall receive fifty per cent. of his average weekly wages so long as such disability is total, not to exceed a maximum of eight dollars per week and not less than a minimum of five dollars per week, unless the employee's wages shall be less than five dollars per week, in which event he shall receive compensation equal to his average weekly wages.

§ 54. Partial disability—Schedule.—In case of injury resulting in partial disability, the employee shall receive fifty per cent. of the impairment of

his earning capacity during the continuance thereof, not to exceed a maximum of eight dollars per week, or a greater sum in the aggregate than two thousand and eighty dollars. In cases included in the following schedule, the disability in each case shall be deemed to continue for the period specified and the compensation so paid for such injury shall be as specified herein, to-wit:

- The loss of one arm between the elbow and shoulder, 208 weeks;
- The loss of a forearm at the lower half thereof, 104 weeks;
- The loss of a hand, 104 weeks;
- The loss of a palm where thumb remains, 70 weeks;
- The loss of a thumb and the metacarpal bone thereof, 50 weeks;
- The loss of a thumb at the proximal joint, 35 weeks;
- The loss of a thumb at the second or distal joint, 18 weeks;
- The loss of an index finger and the metacarpal bone thereof, 26 weeks;
- The loss of an index finger at the proximal joint, 18 weeks;
- The loss of an index finger at the second joint, 13 weeks;
- The loss of an index finger at the distal joint, 9 weeks;
- The loss of a second finger and the metacarpal bone thereof, 18 weeks;
- The loss of a middle finger at the proximal joint, 13 weeks;
- The loss of a middle finger at the second joint, 9 weeks;
- The loss of a middle finger at the distal joint, 5 weeks;
- The loss of a third or ring finger and the metacarpal bone thereof, 11 weeks;
- The loss of a ring finger at the proximal joint, 7 weeks;
- The loss of a ring finger at the second joint, 7 weeks;
- The loss of a ring finger at the distal joint, 4 weeks;
- The loss of a little finger and the metacarpal bone thereof, 13 weeks;
- The loss of a little finger at the proximal joint, 9 weeks;
- The loss of a little finger at the second joint, 9 weeks;
- The loss of a little finger at the distal joint, 4 weeks;
- The loss of all the fingers of one hand where the thumb and palm remain, 52 weeks;
- The loss of a leg at the hip joint, or so near thereto as to preclude the use of an artificial limb, 208 weeks;
- The loss of a leg at or above the knee, where stump remains sufficient to permit the use of an artificial limb, 139 weeks;
- The loss of a foot at the ankle, 104 weeks;
- The loss of a great toe with the metatarsal bone thereof, 26 weeks;
- The loss of a great toe at the proximal joint, 18 weeks;
- The loss of a great toe at the second joint, 9 weeks;
- The loss of any other toe with the metatarsal bone thereof, 11 weeks;
- The loss of any other toe at the proximal joint, 4 weeks;
- The loss of any other toe at the second or distal joint, 4 weeks;
- The loss of all the toes of one foot, 35 weeks;
- The loss of an eye by enucleation, 139 weeks;
- Total blindness of one eye, 104 weeks;
- Total deafness of both ears, 139 weeks;
- Total deafness of one ear, 35 weeks;
- Total deafness of the second ear, 104 weeks;

Other Relative Injuries: In all other cases, not otherwise specified in the foregoing schedule, the compensation shall bear such relation to the amount stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule, except

(a) **Facial Disfigurement:** If any employee is seriously, permanently disfigured about the face or head, the Commission may allow such sum for compensation on account thereof as it may deem just, not exceeding five hundred dollars.

(b) **Disability Through Infection:** When, by reason of infection or other cause not due to the neglect or misconduct of the injured employee, he is actually disabled longer than the time specified in the foregoing schedule for earning wages, compensation shall be paid such employee for such loss of wages within the limits otherwise provided.

(c) **Paralysis:** For the purpose of this schedule, permanent and complete paralysis of any member as the proximate result of an accidental injury shall be deemed equivalent to the loss thereof.

(d) **Amputation:** Whenever an amputation is made between any two joints mentioned in this schedule (except amputations between the knee and hip joint) the resulting loss shall be estimated as if the amputation had been made at the joint nearest thereto.

(e) The amounts specified in this section are all subject to the limitation as to the maximum weekly amount payable as hereinbefore specified in this Act.

§ 55. Permanent total disability—Presumption.—In cases of permanent total disability, the award shall be fifty per cent. of the average weekly wages and shall continue until the death of such person so totally disabled but not to exceed a maximum of eight dollars per week and not less than a minimum of five dollars per week, unless the employee's average weekly wages are less than five dollars per week at the time of the injury, in which event he shall receive compensation in an amount equal to his average weekly wages.

The loss of both hands or both arms, or both feet or both legs, or both eyes, or of any two thereof, shall prima facie constitute total and permanent disability, to be compensated according to the provisions of this section. Provided, that, where the disability comes under this section, and where the employer or the Commission obtains other suitable employment for such disabled person which he can perform and which in all cases shall be subject to the approval of the Commission, the disabilities set out in this paragraph shall not constitute permanent total disability, but such partial disability as may be determined by the Commission after a finding of the facts.

§ 56. Medical examination—Refusal to submit—Physicians as witnesses.—Whenever, in case of injury, the right to compensation under this Act would exist in favor of an employee, he shall, upon the written request of his employer, or the insurer carrying such risk, submit himself from time to time, to examination by a physician or surgeon duly authorized to practice medicine under the laws of this state, who shall be provided and paid for by the employer, or insurer and shall likewise submit to examination from time to time by any regular physician selected and paid for by said Commission, or a member, or examiner thereof. The employee shall be entitled to have a physician provided and paid for by himself present at any such exami-

nation. So long as the employee, after such written request of the employer or insurer, shall refuse to submit himself to such examination, or shall, in any way, obstruct the same, his right to collect or to begin or to maintain any proceeding for the collection of compensation shall be suspended; and if he shall refuse to submit to such examination, after direction by the Commission, or any member or examiner thereof, or shall, in any way obstruct the same, his right to weekly indemnity which shall accrue and become payable during the period of such refusal or obstruction, shall be barred. If any employee shall persist in unsanitary or injurious practice which tends to imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, the Commission may, in its discretion, reduce or suspend the compensation of any such injured employee. Any physician who shall make, or be present at, any such examination, may be required to testify as to the results thereof. Any physician having attended an employee in a professional capacity, may be required to testify before the Commission when it shall so direct. Physicians will not be required, however, to disclose confidential communications communicated to them for the purpose of treatment and which are unnecessary to a proper understanding of the case.

§ 57. Commutation to lump sum—Amount of death benefits—To whom payable.—Any time after six months has elapsed from the date of the injury, the Commission may order payment in gross or in such manner as it may determine to be for the best interest of the parties concerned. When payment in gross is ordered, the Commission shall fix the gross amount to be paid based on the present worth of partial payments, considering interest at four per cent. per annum.

In case death proximately results from the injury within a period of two years, the benefits shall be in the amounts and to the persons following:

(1) If there be no dependents, the compensation shall be limited to the expenses provided for medical, hospital and funeral of deceased, together with such sums as deceased may have been paid for disability.

(2) If there are wholly dependent persons at the time of the death, the payment shall be fifty per cent. of the average weekly wages, subject to the limitations of this Act as to maximum weekly amount, and to continue for the remainder of the period from the date of the death and not to exceed six years after the date of the injury and not to amount to more than a maximum of two thousand five hundred dollars, nor less than a minimum of one thousand dollars.

(3) If there are partly dependent persons at the time of the death, the payment shall be fifty per cent. of the average weekly wages, subject to the limitations of this Act as to maximum amount, and to continue for all or such portion of the period of six years after the date of the injury, as the Commission in each case may determine and not to amount to more than a maximum of two thousand five hundred dollars.

If death occurs to an injured employee other than as a proximate result of the accident before disability indemnity ceases, and the deceased leaves a person or persons wholly dependent upon him for support, death benefit shall be as follows:

(a) Where the accident proximately caused permanent total disability, the death benefit shall consist of the unpaid and unaccrued portion of the per-

manent total disability benefit which the employee would have received had he lived until he had received the sum of twenty-five hundred dollars.

(b) Where the accident proximately caused permanent partial disability, the death benefit shall consist of the unpaid and unaccrued portion of the permanent partial disability benefit which the employee would have received if he had lived.

§ 58. Same—Partial dependents.—If death occurs to an injured employee, either as a proximate result of the accident or otherwise, before disability indemnity ceases, and the deceased employee leaves no one wholly dependent upon him for support, but one or more persons partially dependent therefor, the death benefit shall not exceed four times the amount devoted by deceased during the year immediately preceding his death to the support of such dependents and shall be apportioned according to the percentage that the amount devoted by the deceased to the support of such person or persons for the year immediately prior to the accident bears to the average annual earnings of the deceased; provided, that such death benefits shall not exceed in the aggregate, the difference between the amount of liability benefits received by deceased in his lifetime, and the sum of twenty-five hundred dollars.

§ 59. Apportionment of death benefits.—The benefits in case of death, shall be paid to such one or more of the dependents of the decedent for the benefit of all the dependents entitled to such compensation as may be determined by the Commission who may apportion the benefits among such dependents in such manner as it may deem just and equitable. Payment to a dependent subsequent in right may be made, if the Commission deems it proper, which payment shall operate to discharge all other claims therefor. The dependents or persons to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof, according to their respective claims upon the decedent for support in compliance with the finding and direction of the Commission.

In all cases of death where the dependents are a widow and one or more minor children, it shall be sufficient for the widow to make application to the Commission on behalf of herself and minor children; and in cases where all of the dependents are minors, the application shall be made by the guardian or next friend of such minor dependents.

§ 60. Rival claimants for death benefit.—Payment of death benefits to one or more dependents shall protect and discharge to that extent all compensation under this Act, unless and until any other person claiming to be a dependent shall have given the Commission notice of his claim. In such case the Commission shall determine the respective rights of said rival claimants, and thereafter such death benefits shall be paid to such dependents as it shall so find entitled under the provisions of this Act.

§ 61. Reduction of amount of compensation by act of employé.—The compensation provided herein shall be reduced fifty per cent.:

(a) Where injury is caused by the willful failure of the employee to use safety devices provided by the employer;

(b) Where injury results from the employee's willful failure to obey any reasonable rule adopted by the employer for the safety of the employee;

(c) Where injury results from the intoxication of the employee.

§ 62. Notice of accident—Service—Inaccuracy.—No claim to recover compensation under this Act shall be maintained unless, within thirty days

after the occurrence of the accident which is claimed to have caused the injury or death, notice in writing, stating the name and address of the person injured, the time and place where the accident occurred, the nature and cause of the injury, and making a claim for compensation with respect to injury and signed by the person injured, or by some one in his behalf, or in case of death, by a dependent or some one on his behalf, stating also the names and addresses of each dependent, shall be served upon the Commission, either by delivering to, and leaving with it a copy of such notice, or by mailing to it by registered mail, a copy thereof, in a sealed and postpaid envelope, addressed to him at its office in Denver, Colorado. Such mailing shall constitute completed service; provided, however, that the failure to give any such notice or any defect or inaccuracy therein, shall not be a bar to a recovery under this Act, if it is found as a fact in the proceedings for the collection of the claim, that there was no intention to mislead the Commission, and that it was not, in fact, misled thereby, or that said claimants were nonresidents; and provided, further, that if no such notice is given, and no payment of compensation has been made within one year from the date of the accident, the right to compensation therefor shall be wholly barred.

§ 63. Exemption of compensation claims.—Compensation before payment shall be exempt from all claims of creditors and from any attachment or execution, and shall be paid only to such employees or their dependents.

§ 64. Nonassignability.—No claim for compensation under this Act shall be assignable, but this provision shall not affect the survival thereof.

§ 65. Assignment of common-law right.—The making of a claim for compensation under this Act, for the injury of or death shall operate as an assignment of any cause of action in court which the employee, or his legal representative, or others, may have against any other party, for such injury or death.

§ 66. Custodian of insurance fund.—The state treasurer shall be the custodian of the State Compensation Insurance Fund and all disbursements therefrom shall be paid by him upon warrants of the state auditor upon vouchers authorized by the Commission for benefits legally due to the person or persons designated in such vouchers, and the state auditor is hereby authorized and directed to draw warrants upon the State Compensation Insurance Fund for payment thereof.

§ 67. Investment of fund.—The state treasurer is hereby authorized to deposit any portion of the State Compensation Insurance Fund not needed for immediate use, in the same manner and subject to all provisions of law with respect to the deposit of state funds by such treasurer; and all interest earned by such portion of the State Compensation Insurance Fund as may be deposited by the state treasurer in pursuance of authority herein given, shall be collected by him and placed to the credit of such fund; *Provided, however,* that none of the funds belonging to the State Compensation Insurance Fund, shall be used for any other purpose whatsoever.

§ 68. Additional bond of treasurer.—The state treasurer shall give a separate and additional bond in such amount as may be fixed by the governor, and with sureties to his approval, conditioned for the faithful performance of his duties as custodian of the State Compensation Insurance Fund, subject to all provisions of law governing bonds of state treasurer.

§ 69. Hearings before Commission.—The Commission shall have full power and authority to hear and determine all questions within its jurisdic-

tion, and its finding, award and order issued thereon shall be final, except as in this Act provided.

Any person affected by any finding, order or award of the Commission may petition for a hearing on the reasonableness of any such finding, order or award.

Such petition shall be verified, and shall specify the finding, order or award upon which a hearing is desired and every reason why such finding or order or award is considered unreasonable. The petitioner shall be deemed to have finally waived all objections to any irregularities and illegalities in the finding, order or award upon which a hearing is sought other than those set forth in the petition. All hearings of the Commission shall be open to the public.

§ 70. Amicable agreements—Hearing on dispute—Testimony.—Any dispute or controversy concerning compensation under this Act, including any in which the State may be a party, shall be submitted to said Industrial Commission in the manner, and with the effect, provided herein. If the injured employee or his dependents, and the employer or his insurer reach an agreement in regard to compensation under this Act, a memorandum of the agreement shall be filed with the Commission, and, if approved by it, thereupon the memorandum for all purposes, shall be enforceable as are all the awards of the Commission. All such agreements shall be approved by the Commission. Such approval shall be given by the Commission only, when the terms thereof conform to the provisions of this Act.

Upon the filing with the Commission by any party in interest, of an application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, the Commission shall fix a time for the hearing thereof, which shall not be more than forty days after the filing of such application. The Commission shall cause reasonable notice of such hearing embracing a general statement of such claim, to be given to each party interested, by service of such notice on him personally or by mailing a copy thereof to him at his last known postoffice address at least ten days before such hearing. Such hearing may be adjourned from time to time in the discretion of the Commission, and hearings shall be held at such places as the Commission may designate. Either party shall have the right to be present at any hearing, in person or by attorney, or by any other agent, and to present such testimony as may be pertinent to the controversy before the Commission, and shall have the right of cross-examination; provided, that the Commission may, with or without notice to either party, cause testimony to be taken, or an inspection of the premises where the injury occurred to be had, or the time books and payroll of the employer to be examined; the testimony so taken, and the results of any such inspection or examination, shall be reported to the Commission for its consideration upon final hearing. All ex parte testimony taken by the Commission shall be reduced to writing and either party shall have opportunity to examine and rebut the same on final hearing. The Commission or any agent designated by him shall have power and authority to issue subpoenas, to compel the attendance of witnesses or parties, and the production of books, papers or records, and to administer oaths.

§ 71. Fees for serving subpoena, and witnesses.—Each officer who serves such subpoena shall receive the same fee as a sheriff, and each witness who appears, in obedience to a subpoena, before the Commission or its agents,

shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the district court, which shall be audited and paid from the state treasury in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers approved by the Commission. No witness subpoenaed at the instance of a party other than the Commission or its agent shall be entitled to compensation from the state treasury unless the Commission shall certify that his testimony was material to the matter investigated.

§ 72. Failure to appear—Compelling attendance.—Any person who shall willfully fail or neglect to appear and testify or to produce books, papers, and records as required by such subpoena duly served upon him, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned in the county jail not longer than thirty days for each such offense. Each day such person shall so refuse or neglect shall constitute a separate offense.

The district court of the county wherein such person resides, or district court of the city and county of Denver, upon application of the Commission or its agent, may issue an order compelling the attendance and testimony of witnesses and the production of books, papers and records before such Commission or any such agent.

Upon such hearing, if it shall be found that the finding, order or award complained of is unreasonable, the Commission shall substitute therefor such other finding, order or award as shall be just and reasonable, or may rescind such finding, order or award.

§ 73. Depositions.—The Commission or any party may, in any investigation, cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in district courts. All such depositions shall be taken upon commission issued by the Commission and shall be taken in accordance with the laws and rules of court covering depositions in civil cases in the district courts of this state.

§ 74. Record of proceedings.—A full and complete record shall be kept of all proceedings had before the Commission on any investigation and all testimony shall be taken down by a stenographer appointed by the Commission.

§ 75. Transcript as evidence.—A transcribed copy of the evidence and proceedings, or any specific part thereof, on any investigation, by a stenographer appointed by the Commission, being certified by such stenographer to be a true and correct transcript of the testimony on the investigation, of a particular witness, or of a specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation, so purporting to be taken and subscribed, may be received as evidence by the Commission with the same effect as if such stenographer were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand to any party upon the payment of the fees therefor as prescribed for transcripts in district courts.

§ 76. Findings and award.—After final hearings by said Commission it shall make and file (1) its findings upon all facts involved in the controversy, and (2) its award, which shall state its determination as to the rights of the

claimant. Pending the hearing and determination of any controversy before it the Commission shall have power to order the payment of such part of the compensation which the Commission concedes is or may fall due, as to which the claimant is entitled, and upon the final determination of the Commission as to the rights of the claimant, such payments so made shall be specified in and constitute a part of his finding and award.

The Commission on its own motion, on three days' notice to the parties interested, by mail or served personally, may modify or change his order, finding or award at any time within fifteen days from the date thereof, if he shall discover any mistake therein.

§ 77. Application for hearing prerequisite to review.—No action, proceeding or suit to set aside, vacate or amend any finding, order or award of the Commission, or to enjoin the enforcement thereof, shall be brought unless the plaintiff shall have first applied to the Commission for a hearing thereon as provided in this Act, and unless such action, proceeding or suit shall have been commenced within sixty days after final decision by the Commission.

§ 78. Review by district court.—Any person in interest being dissatisfied with any such finding, order or award of the Commission issued or promulgated by virtue of the authority conferred in this Act, may commence an action in the district court in and for the county wherein the injury was sustained or in the district court in and for the city and county of Denver against the Commission as defendant to modify or vacate the same on the ground that the same is unlawful or unreasonable, in which action the adverse party shall also be made a defendant.

All such actions shall have precedence over any civil cause of a different nature pending in such court, and the district court shall always be deemed open for the trial thereof, and the same shall be tried and determined by the district court in manner as provided for other civil actions.

§ 79. Judgment roll—Venue.—In such action, a copy of the complaint, which shall state the grounds upon which a review is sought, shall be served with the summons. The Commission shall file its answer within twenty days after the service of the complaint. With its answer, the Commission shall make return to said court of all documents and papers on file in the matter, and of all testimony which may have been taken therein, and of its order, finding and award. Such return of the commissioner when filed in the office of the clerk of the district court shall constitute a judgment roll in such action; and it shall not be necessary to settle a bill of exceptions in order to make such return part of the record of such court in such action. Said action may thereupon be brought on for hearing before said court upon such record by either party on ten days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge.

§ 80. Modification of award by Commission.—If upon trial of such action it shall appear that all issues arising in such action have not theretofore been presented to the Commission in the petition filed as provided in this Act, or that the Commission has not theretofore had an ample opportunity to hear and determine any of the issues raised in such action, or has for any reason, not in fact heard and determined the issues raised, the court, shall, before proceeding to render judgment, unless the parties to such action stipulate to the contrary, transmit to the Commission a full statement of such is-

sue or issues not adequately considered, and shall stay further proceedings in such action for fifteen days from the date of such transmission, and may thereafter grant such further stays as may be necessary.

Upon receipt of such statement, the Commission shall hear and consider the issues not theretofore heard and considered, and may alter, modify, amend or rescind its finding, order or award complained of in said action, and it shall report its action thereon to said court within ten days from the receipt of the statement from the court for further hearing and consideration.

The court shall thereupon order such amendment or other proceeding as may be necessary to raise the issues as presented by such modification of the finding, order or award as may have been made by the Commission upon the hearing, if any such modification has in fact been made, and shall proceed with the trial of such action.

§ 81. Grounds for setting aside order of Commission.—Upon such hearing, the court may confirm or set aside such order, but only upon the following grounds:

- (1) That the Commission acted without or in excess of its powers;
- (2) That the finding, order or award was procured by fraud;
- (3) That the findings of fact by the Commission do not support the order or award;

Any action commenced in court under this section to set aside or modify any finding, order or award of the Commission shall be brought to trial thirty days after issue shall be joined, unless continued on order of the court for good cause shown. No continuance shall be for longer than thirty days at one time.

Upon the trial of any such action the court shall disregard any irregularity or error of the Commission unless it be made affirmatively to appear that the claimant was damaged thereby.

The record in any case shall be transmitted to the Commission within twenty days after the order or judgment of the court, unless, in the meantime, a writ of error addressed to the district court shall be obtained from the supreme court, for the review of such order or judgment.

§ 82. Judgment of district court.—Upon setting aside of any finding, order or award, the court may recommit the controversy and remand the record in the case to the Commission for further hearing or proceedings; or it may enter the proper judgment upon the findings, as the nature of the case shall demand; provided, however, that in no event shall such judgment be for a greater amount of compensation than allowed by this Act, or in any manner conflict with the provisions thereof. An abstract of the judgment entered by the trial court upon the review of any order or award, shall be made by the clerk thereof upon the docket of said court, and a transcript of such abstract may be obtained as of any entry upon such docket.

§ 83. Review by Supreme Court—Writ of error.—The Commission or any party who may consider himself aggrieved by a judgment entered upon the review of any such finding, order or award, may have questions of law only reviewed summarily by the supreme court, by writ of error, as provided by law, and said cause shall be advanced upon the calendar of the supreme court, and a final decision rendered within sixty days from date of issuance of the writ. It shall not be necessary for said Commission or any party aggrieved by said action to execute, serve or file any undertaking in order to obtain such writ of error.

§ 84. **Costs.**—No fees shall be charged by the clerk of any court for the performance of any official service required by this Act, except for the docketing of judgments, and for certified copies of transcripts thereof. On proceedings to review any finding, order or award, costs as between the parties shall be allowed, or not, in the discretion of the court, but no costs shall be taxed against said Commission. In any action for the review of any finding, order or award, and upon any review thereof by the supreme court, it shall be the duty of the district attorney of the county wherein said action is pending, or of the attorney general, if requested by the Commission, to appear on behalf of the Commission, whether any other party defendant should have appeared or be represented in the action or not. Unless previously authorized by the Commission, no lien shall be allowed, nor any contract be enforceable for any contingent attorneys' fees for the enforcement or collection of any claim for compensation, where such contingent fee, inclusive of all attorneys' fees paid, or agreed to be paid, for the enforcement or collection of such claim, exceed fifteen per cent. of the amount at which claim shall be compromised, or of the amount awarded, adjudged or collected.

§ 85. **Violation of provisions—Penalty.**—If any employer or employee, as defined in this Act, or any other person shall violate any provisions of this Act, or shall do any act prohibited thereby, or shall fail or refuse to perform any duty lawfully enjoined, within the time prescribed by the Commission, for which no penalty has been specifically provided, or shall fail, neglect or refuse to obey any lawful order made by the Commission, or any judgment or decree made by any court as provided by this Act, for each such violation, failure or refusal, such employer, employee or other person shall be punished by a fine of not more than one hundred dollars for each such offense.

§ 86. **Penalty cumulative.**—Every day during which any employer, or officer or agent thereof, or any employee, shall fail to comply with any lawful order of the Commission or shall fail to perform any duty imposed by this act, shall constitute a separate and distinct violation thereof; provided, however, that in any action which may be brought to enforce the same, or to enforce any penalty provided for in this act, such violations shall be considered cumulative, and may be joined in such action.

§ 87. **Collection of penalties.**—All penalties provided for in this Act shall be collected in a civil action brought against the employer or employee as the case may be, in the name of the Commission, and all such penalties, when collected, shall be applicable to the expense of the Commission.

§ 88. **Enforcement of Act—Attorney general.**—Upon the request of the Commission, the attorney general, or under his direction, the district attorney of any district or county shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of this Act, or for the recovery of any money due the State Compensation Insurance Fund, or any penalty herein provided for, arising within the district or county in which he was elected, and shall defend in like manner all suits, actions or proceedings brought against the Commission in his official capacity.

§ 89. **False statement constitutes perjury—Penalty.**—If, for the purpose of obtaining any order, benefit, award or compensation or payment under the provisions of this Act, either for himself or for any other person, any one willfully makes a false statement or representation, he shall be guilty of perjury and punished accordingly, and he shall forfeit all right to compensation under this Act upon conviction of such offense.

§ 90. **Appropriation.**—For the purpose of carrying out the provisions of this Act, there is hereby appropriated out of any money in the state treasury not otherwise appropriated for the ordinary expenses of the departments of the state, the sum of twenty thousand dollars (\$20,000), or so much thereof as may be necessary for the payment of any premiums that may become due the State Compensation Insurance Fund in compliance with section 44 of this Act; and the state auditor is hereby authorized and directed to draw his warrants on said fund upon certified vouchers of the Commission approved by the Governor. ♦

§ 91. **Repealing clause.**—All acts or parts of acts in conflict with the provisions of this Act, are hereby repealed; provided, that no right of action now existing shall be affected by such repeal, and nothing contained in this Act shall be construed to affect the authority of the state board of health relative to the public health.

§ 92. **Validity of Act.**—If any part, section, sub-section, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The General Assembly hereby declares that it would have passed this Act and each part, section, sub-section, sentence, clause or phrase irrespective of the fact that any one or more other parts, section, sub-section, sentences, clauses or phrases be declared unconstitutional.

§ 93. **Necessity for Act.**—It is hereby declared that this Act is necessary for the immediate preservation of the public peace, health and safety.

§ 94. **Emergency clause.**—In the opinion of the General Assembly an emergency exists; therefore, this Act shall take effect and be in force immediately after its passage.

INDUSTRIAL COMMISSION OF COLORADO

(*Sess. Laws 1915, H. B. No. 177, c. 180, p. 562.*)

An Act to determine and define the relations between employer and employee, providing for safe and hygienic conditions and for compensation for accidental injury to or death of employees; for insurance of such compensation; establishing an Industrial Commission, prescribing its powers, and providing for review of its proceedings; making an appropriation to carry out the provisions of this Act; providing penalties for violation of this Act; repealing all Acts and parts of Acts in conflict with this Act, and declaring this Act to be necessary for the immediate preservation of public peace, health and safety.

Be it Enacted by the General Assembly of the State of Colorado:

§ 1. **Commission.**—The term "Commission" when used in this Act shall mean the "Industrial Commission of Colorado."

§ 2. **Commissioner.**—The term "commissioner" when used in this Act shall mean one of the members of the Commission.

§ 3. **Number and sex.**—Unless the context otherwise requires, a word used in this Act in the singular number shall also include the plural; and a word used in this Act in the masculine gender shall also include the feminine.

§ 4. **Construction and meaning of terms.**—The following terms as used in this Act, shall be construed and have the following meaning, unless otherwise specifically defined in the context:

(a) The term "place of employment" shall mean and include every place, whether indoors or out or underground, and the premises appurtenant thereto, where either temporarily or permanently any industry, trade or business is carried on, or where any process or operation, directly or indirectly relating to any industry, trade or business, is carried on, and where any person is directly or indirectly employed by another for direct or indirect gain or profit.

(b) The term "employment" shall mean and include any trade, occupation or process of manufacture, or any method of carrying on such trade, occupation, or process of manufacture in which any person may be engaged.

(c) The term "employer" shall mean and include:

I. The State, and each county, city, town, irrigation and school district therein, and all public institutions and administrative boards thereof.

II. Every person, association of persons, firm and private corporation (including any public service corporation), manager, personal representative, assignee, trustee and receiver, who has four (4) or more persons regularly engaged in the same business or employment, (except as otherwise expressly provided in this Act), in service under any contract of hire, express or implied.

III. This Act is not intended to apply to employers of private domestic servants or farm and ranch labor; nor to employers who employ less than four employees regularly in the same business, or in or about the same place of employment.

(d) The term "employee" shall mean and include every person in the service of the State or of any county, city, town, irrigation or school district therein, or of any public institution or administrative board thereof, and any other person, association of persons, firm, private corporation, including any public service corporation, personal representative, assignee, trustee, or receiver under any contract of hire, express or implied, including aliens, and also including minors who are legally permitted to work under the laws of this state, who, for the purposes of this Act, shall be considered the same, and shall have the same power of contracting with respect to their employment as adult employees.

(e) The term "order" shall mean and include any decision, rule, regulation, direction, requirement or standard of the commission, or any other determination arrived at or decision made by such Commission.

(f) The term "general order" shall mean and include such order of the Commission as applies generally throughout the state to all persons, employments or places of employment, under the jurisdiction of the Commission. All other orders of the Commission shall be considered special orders.

(g) The term "local order" shall mean and include any ordinance, order, rule or determination of any common council, board of aldermen, board of supervisors, board of trustees, or board of commissioners, of any county, town, city, or city and county operating under any general or special law of this state, or of the board of health of the state or any municipality therein, or any order or direction of any official of the state or municipality therein.

(h) The term "deputy" shall mean and include any person employed by the Commission designated as such deputy by the Commission, and who may be engaged in the performance of duties under the direction of the Commission.

(i) The term "safe" or "safety" as applied to an employment or place of employment, shall mean such freedom from danger to the life, health and

safety of employees, and such reasonable means of notification, egress and escape in case of fire, as the nature of the employment will reasonably permit.

§ 5. Industrial Commission—Created—Members—Oath—Bond—Quorum.—There is hereby created a board which shall be known as the "Industrial Commission of Colorado." Within thirty days after the passage of this Act the governor, by and with the consent of the senate, shall appoint one member whose term of office shall expire March 1, 1917, a second member whose term of office shall expire March 1, 1919, and a third member whose term of office shall expire March 1, 1921. Upon the expiration of each appointment, the governor shall appoint members of the Commission, by and with the advice and consent of the senate, for terms of six years each. Vacancies shall be filled in the same manner for unexpired terms. Not more than two of the Commissioners shall be members of the same political party. Not more than one of the appointees to such Commission shall be a person who, on account of his previous vocation, employment or affiliations, can be classed as a representative of employers, and not more than one of such appointees shall be a person who, on account of his previous vocation, employment or affiliations, can be classed as a representative of employees.

Each member of the Commission, before entering upon the duties of his office, shall take the oath prescribed by the constitution, and shall give good and sufficient bond running to the people of the State of Colorado, in the penal sum of ten thousand dollars, conditioned that he shall faithfully discharge the duties of his office and shall account for and pay over to the person entitled thereto, such moneys as shall come into his possession; said bond shall be signed by a surety company duly authorized to do business in this state, or by two or more individuals as surety or sureties and shall be subject to approval by the governor and shall then be filed with the secretary of state. If surety company bonds shall be furnished, the premium therefor shall be paid by the state as other expenses of the Commission are paid. In case of a vacancy, the remaining two members of the Commission shall exercise all the powers and authority of the Commission until such vacancy is filled. Each member of the Commission shall receive an annual salary of not to exceed four thousand dollars, and actual expenses necessarily incurred in the performance of his duties, which shall be in full for all services performed. The Commissioners shall devote their entire time to the duties of their office.

A majority of said Commissioners shall constitute a quorum to transact business and for the exercise of any of the powers or authority conferred by this Act.

§ 6. Deputies and employés of Commission—Actuary—Expenses.—The Commission shall have power, with the approval of the state auditing board, to employ during its pleasure such deputies, experts, statisticians, accountants, inspectors, clerks, and other employees as it may deem necessary to carry out the provisions of this Act or to perform the duties and exercise the powers conferred by law upon the Commission. The commissioners, secretary, deputies, statisticians, accountants, inspectors, clerks, and all other employees, except experts and actuaries in the employ of the Commission, shall have been for two years prior to such employment or appointment, bona fide residents of the state of Colorado, and skilled and efficient in the duties assigned to them, and each and all of them, except only the experts shall, while in the employ of the Commission, devote their entire time to the serv-

ice of the Commission. The Commission shall employ and always maintain in the department a compensation actuary who shall be experienced and skilled and fully competent to perform the duties of the position, and to assist in or take charge of the practical operation of this Act under the general direction of the Commission. The actuary shall receive such salary as may be agreed upon by the state auditing board.

All deputies, statisticians, accountants, clerks, experts and all other employees of the Commission shall receive such compensation as may be fixed by law or by the Commission, acting in conjunction with the state auditing board. The salary or compensation of every person holding employment under the Commission shall be paid monthly from the funds appropriated for the use of the Commission, after being approved by the Commission, and the state auditing board.

All expenses incurred by the Commission pursuant to the provisions of this Act, including the actual and necessary traveling expenses and other expenses and disbursements of the Commissioners, their deputies and employees, incurred while on business of the Commission, shall be paid from the funds appropriated for the use of the Commission, upon claims therefor, itemized and sworn to, made by the person who incurred the same, which shall be allowed by the Commission, subject to the approval of the state auditing board.

§ 7. Name and seal of Commission—Judicial notice.—The Commission shall be known collectively as the "Industrial Commission of Colorado" and in that name may sue and be sued. It shall have a seal upon which shall be inscribed the words "Industrial Commission—Colorado—Seal." Its seal shall be affixed to all orders, awards, proceedings and copies thereof and to such other instruments as the Commission shall direct. All courts shall take judicial notice of said seal, and any copy of any record or proceeding of the Commission certified under said seal shall be received in all courts as evidence as if it were the original thereof.

§ 8. Office and equipment—Place of holding sessions.—The Commission shall keep its office at the Capitol and shall be provided by the board of capitol managers or its successors with suitable rooms. The Commission is authorized to procure all necessary office furniture, stationery, books, periodicals, maps, instruments, apparatus and appliances and other necessary supplies and incur such other expenses as may be actual and necessary, and the same shall be paid for in the same manner as other expenses authorized by this Act. The Commission or a Commissioner may hold sessions at any place other than the Capitol when the convenience of the Commission or the parties interested requires.

§ 9. Organization of Commission—Chairman—Secretary—Quorum—Sessions—Proceedings—Record.—Within thirty days after the passage of this Act, the Commission shall meet at the Capitol and organize in the manner herein provided. The governor shall be ex-officio chairman of the Commission, and the secretary of state shall be ex-officio secretary thereof. The secretary shall appoint an assistant secretary, at a salary of not to exceed \$2500 per annum. It shall be the duty of the secretary to keep a full and correct record of all proceedings of the Commission, to issue all necessary processes, writs, warrants, orders, awards, and notices and to perform all other duties as the Commission may prescribe. He shall also have supervision of

the collection of data, information concerning matters covered by the provisions of the Act, and make such reports thereon as the Commission may direct.

A majority of said commissioners shall constitute a quorum to transact business and for the exercise of any of the powers or authority conferred by this Act.

The sessions of the Commission shall be open to the public and shall stand and be adjourned without further notice thereof on its record. All of the proceedings of the Commission shall be shown on its record, which shall be a public record, and all voting shall be by the calling of each member's name by the secretary, and each member's vote shall be recorded on the proceedings as the same is cast.

§ 10. Rules of Commission.—Subject to the provisions of this Act, the Commission may adopt its own rules of procedure and may change the same from time to time in its discretion.

§ 11. Powers and duties.—It shall also be the duty of the Commission, and it shall have the power, jurisdiction and authority:

(a) To appoint advisors, who shall, without compensation, assist the Commission in the execution of its duties;

(b) To inquire into and supervise the enforcement, as far as respects relations between employer and employee, of the laws relating to child labor, laundries, stores, factory inspection, employment of females, employment of offices and bureaus, mining, both coal and metalliferous, fire escapes and means of egress from places of employment and all other laws protecting the life, health, and safety of employees in employments and places of employment;

(c) To investigate, ascertain, declare and prescribe safety devices, safeguards or other means or methods of protection best adapted to render safe the employees of every employment and place of employment, as may be required by law.

(d) To ascertain and fix such reasonable standards and to prescribe, modify and enforce such reasonable orders for the adoption of safety devices, safeguards and other means or methods of protection to be as nearly uniform as possible, as may be necessary to carry out all laws relative to the protection of the life, health, safety and welfare of employees in employments and places of employment.

(e) To ascertain, fix and order such reasonable standards, rules or regulations as provided by law, for the construction, repair and maintenance of places of employment, as shall render them safe.

(f) To adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings; to alter or amend the same from time to time in its discretion; such rules and regulations shall not be effective until ten days after their publication. A copy of such rules and regulations shall be delivered to every citizen making application therefor, and a copy delivered with every notice of hearing;

(g) To license and supervise private employment agencies; to supervise state free employment agencies; to do all in its power to bring together employers seeking employees, and working people seeking employment. It shall investigate the extent and causes of unemployment in the state of Colorado and the remedies therefor, and it shall devise and adopt the most efficient

means within its power to avoid unemployment, and to prevent involuntary idleness;

(h) Any county, city or town may enter into an agreement with the Commission for such period of time as may be deemed desirable for the purpose of establishing and maintaining local free employment offices, and it shall be lawful for any county, city or town to appropriate and expend the necessary money and to permit the use of public property for the joint establishment and maintenance of such offices as may be agreed upon;

(i) To collect, collate and publish statistical and other information relating to the work under its jurisdiction; annually, on or before the tenth day of December, to make a full report to the governor covering its work during the year preceding the first day of said month of December; to make public reports in its judgment necessary;

(j) The Commission shall cause to be printed, and, upon application, furnished, free of charge, to any employer or employee such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this Act; it shall provide such proper record books or records as it shall deem required for the proper and efficient administration of this Act, all such records to be kept in the office of the Commission. It shall also cause to be printed in proper form for distribution to the public proper pamphlets showing its orders, regulations and rules of procedure, and shall furnish the same to any person upon application therefor, and the fact that such orders, regulations and rules of procedure are printed ready for distribution to all who apply for the same, shall be a sufficient publication of the same as required by this Act.

(k) To administer and enforce all the provisions of law relating to compensation for accidental injury to and death of employees.

§ 12. Orders and awards.—All general orders shall take effect upon their publication in the regular pamphlets of rules and regulations issued by the Commission.

Special orders shall take effect as therein directed.

The Commission may, upon application of any person, grant such time as may be reasonably necessary for compliance with any order. Any person may petition the Commission for an extension of time, which the Commission shall grant if it finds such an extension of time necessary.

All orders of the Commission shall be valid and in force, and prima facie reasonable and lawful until they are found otherwise in an action brought for that purpose, pursuant to the provisions of this Act, or until altered or revoked by the Commission.

A substantial compliance with the requirements of this Act, shall be sufficient to give effect to the orders or awards of the Commission and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

§ 13. Duties of employers.—Every employer shall exercise reasonable care and comply fully with all the requirements of law respecting health and safety and to furnish places of employment which shall be safe for employees therein and to furnish and use safety devices and safeguards, and to adopt and use methods and processes reasonably adequate to render such employment and places of employment safe, and to do every other thing reasonably necessary to protect the life, health and safety of such employees. Every employer and every owner of a place of employment now or hereafter construct-

ed shall exercise reasonable care to so construct, repair or maintain such place of employment as to render the same safe, in accordance with the statutes of this state in such cases made and provided.

§ 14. Unsafe place of employment.—Whenever the Commission shall learn, or upon petition by any person be informed, that any employment or place of employment is not safe, it shall proceed summarily with or without notice, to make such investigation as may be necessary to determine the matter complained of, in so far as the same may affect the provisions of this Act.

After investigation, the Commission shall call the attention of the commissioner of labor, or other officer authorized to inspect and regulate same, and shall order such changes as may be necessary to render such employment or place of employment safe, and comply with the provisions of this Act.

§ 15. General supervisory powers.—The Commission is vested with the power and jurisdiction to have such supervision of every employment and place of employment in this state as may be necessary, adequately to ascertain and determine the conditions under which the employees labor and the manner and extent of the obedience by the employer to all laws and all lawful orders requiring such employment and places of employment to be safe, and requiring the protection of the life, health and safety of every employee in such employment or place of employment, and to enforce all provisions of law relating thereto; and is also vested with power and jurisdiction to administer all provisions of this Act with respect to the relations between employer and employee and to do all other acts and things convenient and necessary to accomplish the purposes of this Act.

§ 16. Duties of public officers in assisting Commission—Report.—It shall be the duty of all officers and employees of the state, the counties and municipalities, upon request of the Commission to enforce in their respective departments, all lawful orders of the Commission, in so far as the same may be applicable and consistent with the general duties of such officers and employees; and it shall also be their duty to make to such Commission such reports as it may require concerning matters within their knowledge appertaining to the purposes of this Act, and to furnish to it such facts, data, statistics and information as may from time to time come to them appertaining to the purposes of this Act, and the duties of such Commission thereunder, and particularly all information coming to their knowledge respecting the condition of all places of employment subject to the provisions of this Act, as regards the health, protection and safety of employees, and the conditions under which they labor.

It shall be the duty of the labor statistician of the bureau of labor statistics to collect, compile and report to the Commission such data, facts and information as shall come to his department or to the Commission concerning the relations between employer and employee and relating in any way to the provisions of this Act.

§ 17. Agent to conduct investigations.—For the purpose of making any investigation with regard to any employment or place of employment, or other matter contemplated by the provisions of this Act, the Commission shall have power to appoint, by an order in writing, any member of the Commission, any deputy or any other competent person as an agent whose duties shall be prescribed in such order.

In the discharge of his duties such agent shall have every power whatsoever for obtaining information granted in this Act to the Commission and all powers granted by law to officers authorized to take depositions are hereby granted to such agent.

The Commission may conduct any number of such investigations contemporaneously through different agents, and may delegate to such agents the taking of all testimony bearing upon any investigation or hearing. The decision of the Commission shall be based upon its examination of all testimony and records. The recommendations made by such agents shall be advisory only and shall not preclude any further investigation, or the taking of further testimony, if the Commission so order.

§ 18. Information to be furnished—Penalty for refusal.—Every employer and employee shall furnish the Commission, upon request, all information required by it to accomplish the purposes of this Act, which information shall be furnished on blanks to be prepared by the Commission; and it shall be the duty of the Commission to furnish such blanks to such employer free of charge, upon request therefor. Every employer receiving from the Commission any blanks, with directions to fill out the same, shall cause the same to be properly filled out so as to answer fully and correctly all questions therein propounded, and to give all the information therein sought, or if unable to do so, he shall give in writing good and sufficient reasons for such failure. The Commission may require that the information herein required to be furnished be verified under oath and returned to the Commission within the period fixed by it or by law. The Commission, or any person employed by it for that purpose, shall have the right to examine, under oath, any employee or employer, or the officer, agent or employee thereof, for the purpose of ascertaining any information which such employer or employee is required by this Act to furnish to the Commission. Any employer or employee who shall fail or refuse to furnish such information as may be required by the Commission under authority of this Act, shall, if an employer, be deemed guilty of a misdemeanor and shall be punished by a fine of two hundred dollars, and if an employee shall be deemed guilty of a misdemeanor and shall be punished by a fine of twenty-five dollars.

§ 19. Information to be private.—The information contained in the reports provided for in the preceding section, and such other information as may be furnished to the Commission, by employers in pursuance of the provisions of this Act, shall be for the exclusive use and information of said Commission in the discharge of its official duties and shall not be open to the public nor to be used in any court, in any action or proceeding pending therein, unless the Commission is a party to such action or proceeding; but the information contained in said report may be tabulated and published by the Commission in statistical form, for the use and information of other state departments and the public. Any person in the employ of the Commission who shall divulge any information secured by him in respect to the transactions, property or business of any employer to any person other than the Commission, shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) and shall thereafter be disqualified from holding any appointment or employment with any department under the state.

§ 20. Access to places of employment.—The Commission, or any member thereof, and, on being authorized in writing by the Commission, any other per-

son, may, without any other warrant than this Act, at any reasonable time, enter any building, mine, mine workings, factory, workshop, place or premises of any kind, wherein, or in respect of which, any industry is carried on or any work is being or has been done or commenced, or any matter or thing is taking place, which has been made the subject of an investigation, hearing or arbitration by the Commission or the board, and inspect and view any work, material, machinery, appliance or article therein and interrogate any persons in or upon any such building, mine, mine workings, factory, workshop, place or premise as aforesaid in respect of or in relation to any matter or thing hereinbefore mentioned; and any person who shall hinder or obstruct the Commission, or any such person authorized as aforesaid, in the exercise of any power conferred by this section, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than one thousand dollars.

§ 21. Inspection of books and records.—All books, records and payrolls of employers, showing or reflecting in any way upon the amount of wage expenditure of such employers, and other data, facts and statistics appertaining to the purposes of this Act shall always be open for inspection by the Commission or any of its agents for the purpose of ascertaining the conditions of employment, and such other information as may be necessary for the uses and purposes of the Commission in its administration of the law.

Any employer who shall refuse to admit such Commission or its agents to such place of employment for such purposes shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).

§ 22. Extraordinary procedure.—Such Commission, or persons by it duly designated, shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than as herein or by the rules of the Commission provided; but may make such investigations in such manner as in its judgment are best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this act.

§ 23. Record of proceedings—Transcript as evidence.—A full and complete record shall be kept of all proceedings had before or under the order of the Commission on any investigation and all testimony shall be taken down by a stenographer appointed by the Commission.

A transcribed copy of the evidence and proceedings, or any specific part thereof, or any investigation, by a stenographer appointed by the Commission, being certified by such stenographer to be a true and correct transcript of the testimony on the investigation, of a particular witness, or of a specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation, so purporting to be taken and subscribed, may be received as evidence by the Commission with the same effect as if such stenographer were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand to any party upon the payment of the fees therefor as prescribed for transcripts in district courts.

§ 24. Depositions.—The Commission or any party may in any investigation cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in district courts. All such depositions shall be taken upon commission

issued by the Commission and shall be taken in accordance with the laws and rules of court covering depositions in civil cases in the district courts of this state.

§ 25. Compelling obedience to orders—Service and witness fees.—In case of failure or refusal of any person to comply with the order of the Commission or subpoena issued by it or its agents, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refuse to permit an inspection as provided in this Act, the district judge of the county in which the person resides, on application of the Commission or any agent appointed by it shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpoena issued from such court on a refusal to testify thereon.

Each officer who serves such subpoena shall receive the same fee as a sheriff, and each witness who appears, in obedience to a subpoena before the Commission or its agent shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the district court, which shall be audited and paid from the state treasury in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers approved by the Commission. No witness subpoenaed at the instance of a party other than the Commission or its agents shall be entitled to compensation from the state treasury unless the Commission shall certify that his testimony was material to the matter investigated.

§ 26. Scope of Commission's inquiries.—The Commission shall inquire into the general conditions of labor in the principal industries in the state of Colorado and especially in those which are carried on in corporate forms; into existing relations between employers and employees; into the effect of industrial conditions on public welfare and into the rights and powers of the community to deal therewith; into the conditions of sanitation and safety of employees and the provisions for protecting the life, limb, and health of the employees; into relations existing between lessees of state lands and the state, as to production and royalties or rentals paid, and into the relations between said lessees and their employees with respect to wages paid and conditions of labor; into the growth of associations of employers and of wage earners and the effect of such associations upon the relations between employers and employees; into the extent and results of methods of collective bargaining; into any methods which have been tried in any state or in foreign countries for maintaining mutually satisfactory relations between employees and employers; into methods of avoiding or adjusting labor disputes through peaceful and conciliatory mediation and negotiations; into the scope, methods, and resources of existing bureaus of labor and into possible ways of increasing their efficiency and usefulness. The Commission shall seek to discover the underlying causes of dissatisfaction in the industrial situation and take all necessary means and methods within the powers of such Commission as provided by law, to alleviate the same, and to report from time to time to the General Assembly such remedial legislation as in the judgment of the Commission may be advisable, with their recommendations thereon.

§ 27. Arbitration of disputes.—The Commission shall do all in its power to promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees, and to avoid the necessity of resorting to strikes, lockouts, boycotts, blacklists, discriminations and legal proceedings in matters of employment. In pursuance of this duty it may appoint temporary

boards of arbitration, provide necessary expenses of such boards, order reasonable compensation not exceeding ten dollars per day for each member engaged in such arbitration, prescribe rules of procedure for such arbitration boards, conduct investigations and hearings, publish reports and advertisements, and do all other acts and things convenient or necessary to accomplish the purposes directed in this section.

Any investigation, inquiry or hearing may be undertaken or held by or before any commissioner, deputy, agent, or board of arbitration, or committee designated for that purpose by the Commission, and every finding, order, award or decision made by those so designated, pursuant to such investigation, inquiry or hearing, when approved and confirmed by the Commission, shall be and be deemed to be the finding, order, award or decision of the Commission.

§ 28. Power to summon witnesses.—For the purpose of such investigations, hearings or arbitrations, the Commission, or an arbitration board appointed by the Commission, shall have all the powers of summoning before it, and enforcing the attendance of witnesses, of administering oaths, and of requiring witnesses to give evidence on oath, or on solemn affirmation, and to produce such books, papers or other documents or things as the Commission, or the board, deems requisite to the full investigation of the matters into which it is inquiring, as is vested in any court of record in civil cases.

Any members of the Commission, or the board, may administer on oath, and the Commission, or the board, may accept, admit and call for such evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not. Any party to the proceedings shall be competent and may be compelled to give evidence as a witness.

§ 29. Change in working conditions.—Employers and employees shall give at least thirty days' notice of an intended change affecting conditions of employment with respect to wages or hours; and, in every case where a dispute has been made the subject of an investigation, hearing, or arbitration by the Commission, or the board, until the dispute has been finally dealt with by such Commission, or board, neither of the parties nor the employees affected, shall alter the conditions of employment with respect to wages or hours, or on account of the dispute, do, or be concerned in doing, directly or indirectly, anything in the nature of a lockout or strike, or a suspension or discontinuance of work or employment; but the relationship of employer and employee shall continue uninterrupted by the dispute, or anything arising out of the dispute; but, if either party uses this or any other provision of this Act for the purpose of unjustly maintaining a given condition of affairs through delay, such party shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars.

§ 30. Strikes and lockouts forbidden prior to investigation.—It shall be unlawful for any employer to declare or cause a lockout, or for any employee to go on strike, on account of any dispute prior to or during an investigation, hearing, or arbitration of such dispute by the Commission, or the board, under the provisions of this Act; provided, that nothing in this act shall prohibit the suspension or discontinuance of any industry or of the working of any persons therein for any cause not constituting a lockout or strike, or to prohibit the suspension or discontinuance of any industry or of the working of any persons therein which industry is not affected with a public inter-

est; provided, further, that nothing in this Act shall be held to restrain any employer from declaring a lockout, or any employee from going on strike in respect to any dispute after the same has been duly investigated, heard, or arbitrated, under the provisions of this Act.

§ 31. Conditions requisite to binding effect of decision.—Nothing in this Act shall be construed to make any findings, determination of the rights of said parties, decision or award of said Commission or of any board of arbitration appointed thereby upon the facts of such controversy, binding, conclusive or enforceable upon any of the parties thereto, or affected thereby, unless

(1) Such parties have agreed in writing prior to the commencement of any such investigation or arbitration, or during the continuance thereof, to accept and be bound by the terms of such findings, determination of rights, decision or award, and then only to the extent in such written agreement provided; or,

(2) Unless said parties shall agree to accept and be bound by such action of the Commission or board of arbitration after the same has been made known to them; provided, however, that in either such instance, the findings, determination of rights, decision and award of said Commission or board of arbitration, when confirmed by formal order of said Commission, shall be and remain in full force and effect, according to the terms and for the time provided in such formal order of the Commission, and shall be binding, effective and enforceable upon the parties thereto, as any finding, order or award of the Commission under the provisions of this Act.

§ 32. Penalty for striking or causing lockout.—Any employer declaring or causing a lockout contrary to the provisions of this Act shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) for each day or part of a day that such lockout exists.

Any employee, who goes on strike contrary to the provisions of this Act shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) for each day or part of a day that such employee is on strike.

§ 33. Penalty for inciting either.—Any person who incites, encourages, or aids in any manner any employer to declare or continue a lockout, or any employee to go or continue on strike, contrary to the provisions of this Act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars (\$50.00), nor more than one thousand dollars (\$1,000.00), or by imprisonment in the county jail for a term of not more than six months, or both such fine and imprisonment, in the discretion of the court.

§ 34. Findings final—Petition for hearing on order.—The Commission shall have full power and authority to hear and determine all questions within its jurisdiction, and its findings, award and order issued thereon shall be final, except as in this Act provided.

Any person affected by any finding, order or award of the Commission, may petition for a hearing on the reasonableness of any such finding, order or award.

Such petition shall be verified, and shall specify the finding, order or award upon which a hearing is desired and every reason why such finding, order or award is considered unreasonable. The petitioner shall be deemed to have

finally waived all objections to any irregularities and illegalities in the finding, order or award upon which a hearing is sought other than those set forth in the petition. All hearings of the Commission shall be open to the public.

§ 35. Hearing on reasonableness of order—Modification of award.—

Upon the filing with the Commission by any party in interest, of such petition, the Commission shall fix a time for the hearing thereof, which shall not be more than forty days after the filing of such application. The Commission shall cause reasonable notice of such hearing, embracing a general statement of such claim, to be given to each party interested, by service of such notice on him personally or by mailing a copy thereof to him at his last known postoffice address at least ten days before such hearing. Such hearing may be adjourned from time to time in the discretion of the Commission, and hearings shall be held at such places as the Commission may designate. Either party shall have the right to be present at any hearing, in person or by attorney, or any other agent, and to present such testimony as may be pertinent to the controversy before the Commission, and shall have the right of cross-examination; provided, that the Commission may, with or without notice to either party, cause testimony to be taken, or an inspection or investigation to be made; the testimony so taken shall be reported to the Commission for its consideration upon final hearing. All ex parte testimony taken by the Commission shall be reduced to writing and either party shall have opportunity to examine and rebut the same on final hearing.

Upon such hearing, if it shall be found that the finding, order or award complained of is unreasonable, the Commission shall substitute therefor such other finding, order or award as shall be just and reasonable, or may rescind such finding, order or award.

Whenever at the time of the final determination upon such hearing it shall be found that further time is reasonably necessary for compliance with the finding, order or award of the Commission, the Commission shall grant such time as may be reasonably necessary for such compliance.

§ 36. Finding and award—Filing—Modification.—After final hearings by said Commission, it shall make and file (1) its findings upon all the facts involved in the controversy, and (2) its award, which shall state its determination as to the rights of the parties. Pending the hearing and determination of any controversy before it, the Commission shall have power to make such reasonable orders concerning the subject matter thereof as may be necessary to give effect to the provisions of this Act.

The Commission, on its own motion, on three days' notice to the parties interested, by mail or served personally, may modify or change its order, finding or award at any time within fifteen days from the date thereof, if it shall discover any mistake therein.

§ 37. Civil action on reasonableness—Preference.—Any person in interest being dissatisfied with any such finding, order or award of the Commission issued or promulgated by virtue of the authority conferred in this Act, may commence an action in the District Court in and for the county wherein the injury was sustained or in the District Court in and for the city and county of Denver against the Commission as defendant to modify or vacate the same on the ground that the same is unlawful, or unreasonable.

All such actions shall have precedence over any civil cause of a different nature pending in such court, and the District Court shall always be deemed

open for the trial thereof, and the same shall be tried and determined by the District Court as other civil actions.

§ 38. Prerequisites to action—Pleadings.—No action, proceeding or suit to set aside, vacate or amend any finding, order or award of the Commission, or to enjoin the enforcement thereof, shall be brought unless the plaintiff shall have first applied to the Commission for a hearing thereon as provided in this Act, and unless such action, proceeding or suit shall have been commenced within 60 days after final decision by the Commission; nor shall any injunction issue suspending or staying any order of the Commission except upon application of the District Court or a judge thereof, notice to the Commission and hearing thereon.

In such action, a copy of the complaint, which shall state the grounds upon which a review is sought, shall be served with the summons. The Commission shall file its answer within twenty days after the service of the complaint. With its answer, the Commission shall make return to said court of all documents and papers on file in the matter, and of all testimony which may have been taken therein, and of its order, finding and award. Such return of the Commission when filed in the office of the clerk of the district court shall constitute a judgment roll in such action; and it shall not be necessary to settle a bill of exceptions in order to make such return part of the record of such court in such action. Said action may thereupon be brought on for hearing before said court upon such record by either party on ten days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge.

§ 39. Rehearing before Commission—Modification of award.—If upon trial of such action it shall appear that all issues arising in such action have not theretofore been presented to the Commission in the petition filed as provided in this Act, or that the Commission has not theretofore had an ample opportunity to hear and determine any of the issues raised in such action, or has for any reason, not in fact heard and determined the issues raised, the Court shall, before proceeding to render judgment, unless the parties to such action stipulate to the contrary, transmit to the Commission a full statement of such issue or issues not adequately considered, and shall stay further proceedings in such action for fifteen days from the date of such transmission, and may thereafter grant such further stays as may be necessary.

Upon the receipt of such statement, the Commission shall hear and consider the issues not theretofore heard and considered, and may alter, modify, amend or rescind its findings, order or award complained of in said action, and shall report its action thereon to said court within ten days from the receipt of the statement from the court for further hearing and consideration.

The court shall thereupon order such amendment or other proceeding as may be necessary to raise the issues as presented by such modification of the finding, order or award as may have been made by the Commission upon the hearing, if any such modification has in fact been made, and shall proceed with the trial of such action.

§ 40. Grounds for setting aside award—Trial—Judgment.—Upon such hearing the court may confirm or set aside such order, but only upon one or more of the following grounds:

- (1) That the Commission acted without or in excess of its powers.
- (2) That the finding, order or award was procured by fraud.

(3) That the findings of fact by the Commission do not support the order or award.

(4) That the award does not do substantial justice to the parties.

Any action commenced in court under this section to set aside or modify any finding, order or award of the Commission shall be brought to trial within thirty days after issue shall be joined, unless continued on order of the court for good cause shown. No continuance shall be for longer than thirty days at one time.

Upon the trial of any such action the court shall disregard any irregularity or error of the Commission unless it be made to affirmatively appear that the claimant was damaged thereby.

The record in any case shall be transmitted to the Commission within twenty days after the order or judgment of the court, unless, in the meantime, a writ of error addressed to the district court shall be obtained from the supreme court, for the review of such order or judgment.

Upon the setting aside of any finding, order or award, the court may recommit the controversy and remand the record in the case to the Commission for further hearing or proceedings; or it may enter the proper judgment upon the findings, as the nature of the case shall demand. An abstract of the judgment entered by the trial court upon the review of any order or award, shall be made by the clerk thereof upon the docket of said court, and a transcript of such abstract may be obtained as of any entry upon such docket.

§ 41. Review by Supreme Court.—The Commission or any party aggrieved by a judgment entered upon the review of any such finding, order or award, may have questions of law only reviewed summarily by the supreme court by writ of error, as provided by law, and said cause shall be advanced upon the calendar of the supreme court, and a final decision rendered within sixty (60) days from date of issuance of the writ. It shall not be necessary for said Commission or any party aggrieved by said action to execute, serve or file any undertaking in order to obtain such writ of error.

§ 42. Costs of proceeding.—No fees shall be charged by the clerk of any court for the performance of any official service required by this Act, except for the docketing of judgments, and for certified copies of transcripts thereof. In proceedings to review any finding, order or award, costs as between the parties shall be allowed, or not, in the discretion of the court, but no costs shall be taxed against said Commission. In any action for the review of any finding, order or award, and upon any review thereof by the supreme court, it shall be the duty of the district attorney of the county wherein said action is pending, or the attorney general, if requested by the Commission, to appear on behalf of the Commission, whether any other party defendant should have appeared or be represented in the action or not.

§ 43. Failure of witness to appear—Penalty.—Any person who shall wilfully fail or neglect to appear and testify or to produce books, papers and records as required by subpoena duly served upon him, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00), or imprisoned in the county jail not longer than thirty days for each such offense.

The district court of the county wherein such person resides, or of the city and county of Denver, upon application of the Commission or its agent, may issue an order compelling the attendance and testimony of witnesses and the

production of books, papers and records before such Commission or any such agent.

§ 44. Penalty for violation of Act.—If any employer or employee, or any other person shall violate any provisions of this Act, or shall do any act prohibited thereby, or shall fail or refuse to perform any duty lawfully enjoined, within the time prescribed by the Commission, for which no penalty has been specifically provided, or shall fail, neglect or refuse to obey any lawful order made by the Commission or any judgment or decree made by any court as provided by this Act, for each such violation, failure or refusal, such employer, employee or other person shall be punished by a fine of not less than one hundred dollars for each such offense.

§ 45. Separate violations.—Every day during which any employer or officer or agent thereof, or any employee, shall fail to comply with any lawful order of the Commission or to perform any duty imposed by this Act, shall constitute a separate and distinct violation thereof.

§ 46. Collection of penalties.—All penalties provided for in this Act shall be collected in a civil action brought against the employer or employee as the case may be, in the name of the Commission, and all such penalties, when collected, shall be paid into the expense fund of such Commission and become a part thereof.

§ 47. Prosecutions on behalf of Commission.—Upon request of the Commission, the attorney general, or under his direction, the district attorney of any district or county, shall institute and prosecute the necessary action or proceedings for the enforcement of any of the provisions of this Act, or for the recovery of any money due the Commission, or any penalty herein provided for, arising within the district or county in which he was elected, and shall defend in like manner all suits, actions or proceedings brought against the Commission.

§ 48. Perjury.—If, for the purpose of obtaining any order, benefit or award under the provisions of this Act, either for himself or for any other person, any one wilfully makes a false statement or representation, he shall be guilty of perjury and punished accordingly.

§ 49. Appropriation.—There is hereby appropriated out of any money in the treasury, not otherwise appropriated, the sum of fifty thousand dollars or so much thereof as may be necessary to carry out the provisions of this Act for the current biennial period.

§ 50. Repealing clause.—All acts and parts of acts in conflict with the provisions of this Act, are hereby repealed, provided that no right of action now existing shall be affected by such repeal, and nothing contained in this Act shall be construed to affect the authority of the state board of health relative to the public health.

§ 51. Validity of sections independent.—If any part, section, sub-section, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The General Assembly hereby declares that it would have passed this Act and each part, section, subsection, sentence, clause or phrase irrespective of the fact that any one or more other parts, sections, sub-sections, sentences, clauses or phrases be declared unconstitutional.

§ 52. Exercise of police power.—It is hereby declared that this Act is necessary for the immediate preservation of the public peace, health and safety.

§ 53. **Emergency—When Act effective.**—In the opinion of the General Assembly, an emergency exists; Therefore, this Act shall take effect and be in force immediately after its passage.

MUTUAL LIABILITY INSURANCE

(*Sess. Laws, 1915, H. B. No. 604, c. 181, p. 588.*)

An Act to provide mutual insurance for employers by providing for the organization of corporations on the mutual plan, their powers and duties and the regulation of their affairs, the powers and duties of their directors and officers and the rights and liabilities of its members, and the punishments for violations of the provisions thereof, repealing all Acts and parts of Acts in conflict with this Act and declaring this Act to be necessary for the immediate preservation of public health, peace and safety.

Be it Enacted by the General Assembly of the State of Colorado:

§ 1. **Mutual insurance companies—Incorporation.**—Any fifteen or more individuals, partnerships, associations or corporations who shall have associated themselves together by certificate or articles of incorporation in writing, may become, by complying with Sections 2 and 3 of this Act, a body corporate for the purpose of insuring the members of such corporation or company on the mutual plan against liability, loss or damage resulting from accident to or injury suffered by an employee or other persons and for which the person insured is liable, or the liability of the employer to pay compensation to his employees, or the compensation of employees under any workman's compensation law, or against liability, loss or damage caused by a truck, wagon or other vehicle propelled by steam, gas, gasoline, electricity, mechanical or other power or drawn by horses or mules, used in trade or manufacture and owned by any such person, to the property of another, for which loss or damage the person insured is liable.

§ 2. **Certificates of incorporation.**—Said incorporators shall make, sign and acknowledge before some officer competent to take the acknowledgment of deeds, certificates in writing in which shall be stated: First, the corporate name, which shall include the word "mutual"; second, the objects for which the company shall be created, which objects may include any or all lines of insurance hereinbefore in this act specified; third, the term of the company's existence, not to exceed twenty years, which term, however, may be extended as provided in respect to other incorporations; fourth, the number of directors which shall be not less than three nor more than twenty-one, and the names of those who shall serve for the first year and until election of their successors; fifth, the name of the town or place, and the county, in which the principal office of the company shall be kept.

§ 3. **Filing of certificate.**—One of said certificates of incorporation shall be filed in the office of the Secretary of State and one in the office of the recorder of deeds of the county designated by such certificate as the place where the principal office is to be kept.

§ 4. **License—Right to transact business—Conditions precedent.**—Whenever the certificate or articles of incorporation shall have been filed in the office of the Secretary of State, and the Secretary of State shall have issued the certificate of authority and received the fees, all as now provided by law in respect to corporations organized under the laws of this state, a copy

of such certificate of incorporation certified by the Secretary of State shall be filed with the Commissioner of Insurance, who shall thereupon submit the same to the Attorney-General of the State of Colorado for examination, and if found by him to be in accordance with the provisions of this act and not inconsistent with the constitution of this state, he shall so certify and deliver back the same to the Commissioner, who thereupon, and in writing, shall license such company to open books to receive applications for insurance. No such company shall transact any business of insurance unless and until at least twenty employers employing not less than twenty-five hundred employees shall have applied for and agreed in writing to take insurance therein, covering the liability of such employers to their employees for accidents to or injuries suffered by such employees, nor until a list of such applicants with the number of employees of each, together with such other information as the Commissioner of Insurance may require, shall have been filed with the Commissioner, nor until the president and secretary of the company shall have certified under oath that every application in the list so filed is genuine and made with an agreement by every applicant that he will take the policy or policies applied for by him within thirty days of the granting of the license to the company by the Commissioner to issue policies, nor until the Commissioner being satisfied upon investigation that the list of applicants is genuine and that the required number of applicants will take the policies as applied for and within the time agreed as aforesaid, shall have issued a license to such company to issue policies, such license to be designated as Class A; Provided, however, that the Commissioner of Insurance may in his discretion issue a license to a company wherein the 20 employers have less than 2,500 of employees and more than 1,000 employees when in his judgment the nature of the business and the hazards involved are such that the company can safely conduct a mutual insurance business with such limited number of employees, such license to be designated as Class B. Should the number of employers holding policies at any time fall below or be less than twenty or the number of employees to whom the company may be bound to pay compensation in case of accident fall below 2,500 in a company licensed as Class A or below 1,000 in a company known as Class B, no further policies shall be issued until other employers shall have applied for insurance, who together with existing policyholders shall amount to not less than twenty, having not less than 2,500 employees in a company licensed as Class A or 1,000 in a company licensed as Class B, and until the Commissioner shall in writing have licensed such company to resume the issuance of such policies.

§ 5. **By-laws.**—No by-law of such company shall be inconsistent with this or any other law, and no by-law shall be valid until approved by the Commissioner of Insurance.

§ 6. **Meetings of members—Votes.**—Annual meetings of the members of such company shall be held for the election of directors and the transaction of other business, at such times, upon such notice and in such manner as the by-laws may provide. At all meetings a majority of votes cast thereon shall be necessary to the validity of any action and all voting shall be by ballot. Each member shall have one vote and one additional vote for every five hundred of employees or major fraction thereof, covered by the policy held by such member in the company; provided, that no member shall have more than twenty votes. The votes of a member shall be determined by the average number of employees at work and covered by said member's policy in the

company during the last six months from a date not less than ten days immediately prior to the date of any such meeting. Before any member shall be permitted to cast more than one vote at any meeting of members he shall file with the secretary an affidavit showing the average number of employees at work during the preceding six months covered by the employer's policy of insurance. In all elections for directors each member shall have the right to cast as many votes in the aggregate as shall equal the number of votes to which he is entitled multiplied by the number of directors to be elected at such election; and each member may cast the whole number of such votes, either in person or by proxy, for one candidate or distribute such votes among the two or more candidates; and the directors shall not be elected in any other manner.

§ 7. Directors—Election—Meetings—Officers.—Directors shall be elected annually at such time and place as shall be directed by the by-laws, but after the company shall have been organized and authorized to issue policies not more than two of such directors shall be persons who are not members of such company. They shall hold meetings at such times as may be fixed in the by-laws, and shall keep a record of their proceedings. A majority of the directors shall constitute a quorum for the transaction of business, and the affairs of such company shall be conducted by the directors, who shall receive such compensation as may be provided in the by-laws. The directors shall elect one of their number president, who shall hold office during the pleasure of the directors, and be president of the company. The directors shall elect such other officers as may be provided in the by-laws, and do such things as may be necessary properly to conduct the business of the company. Except as otherwise provided in this act or by-law the powers and duties of the directors and all officers shall be as provided in the by-laws.

§ 8. Premium rates—Assessments—Claims.—The directors shall classify all risks and fix the premium rates for each class and may also, if they desire, adopt and enforce a proper merit-rating schedule. Liability for accidents or injuries to employees or the general public may be insured against in the same or separate policies; provided, the liability under any workmen's compensation law of this state shall be insured by separate policies. The rates charged shall be just, reasonable and adequate, with due allowances for merit-rating if adopted, and all risks of the same kind or degree of hazard shall be written at the same rate.

For greater convenience in determining equitable rates and for assessment, refund or dividend purposes, one or more employments may be separately grouped and separate expenses and income accounts and separate reserves may be maintained in respect thereto. Where the employments are grouped the premiums, assessments and refunds or dividends and reserves shall be fixed by and for groups in accordance with experience in each group.

§ 9. Rules and regulations—Cancellation of policies.—The directors may make and enforce reasonable rules and regulations, not in conflict with the laws of this state, for the prevention of accidents or injuries, and for this purpose the inspectors of the company shall have free access to the premises of all members. The policy of any member may be canceled on thirty days' notice for any failure to provide suitable safety appliances as provided by law or as required by the directors for all other similar risks.

§ 10. Reserves.—Such company shall provide and maintain reserves sufficient to cover its unearned premiums and also to carry to and discharge at

maturity any and all liability for incurred losses and expenses. Such company if it desires may maintain a reserve for catastrophes also. All such reserves and the surplus or other funds, if any, shall be invested in such manner and securities as is now provided by law in this state for domestic insurance companies.

§ 11. Contingent liability.—The Company itself may, in its by-laws and policies, fix the contingent mutual liability of the policyholder for the payment of losses and expenses not provided for by its cash funds, and for the maintenance of reserves; but such contingent liability shall not be less than an amount sufficient to cover all assessments for annual deaths in excess of ninety, as provided in Section 14 and in Class A Companies an amount equal to one times, and in Class B companies an amount equal to five times the premium written in the policy which contingent liability shall be in addition to such premium.

§ 12. Insurance—Powers of company.—Such company may reinsure against all or part of its liability with any insurance company authorized to do a business within this state.

§ 13. Members of company—Policyholders.—Any employer of labor in this state or elsewhere, including any employer within the meaning of the word "employer" as defined in any workmen's compensation law of this state and any public or private corporation, board or association, and any estate in the hands of any receiver, administrator, assignee, executor, guardian, conservator or other trustee whose risk shall be accepted by the company may take out a policy of insurance therein and by so doing shall become a member of such company and exercise and be entitled to all the rights and subject to all liabilities of members. The members of the corporation shall be policyholders therein, and when any member ceases to be a policyholder he shall cease, at the same time, to be a member of the company. A corporation, partnership, association or joint stock company may be a member of such Insurance Company and may authorize another person to represent it in such Insurance Company, and such representative shall have all the rights of any individual member including that of holding offices in such company.

§ 14. Assessments—Deficiencies.—The directors of any such company which is not possessed of assets in excess of the required reserves and of all other liabilities shall make an assessment upon each of the persons to whom it shall have issued policies, proportionate to their several liability, and each of said persons, shall be liable to the company immediately for his proportionate amount of such an assessment to make good any deficiency occurring during the life of such policy if the person be notified of such assessment within one year from the date of the expiration of his policy. If the deficiency for which assessment is made is caused by fatal accidents in excess of ninety in any one year in a company or group comprising the industry of coal mines, the assessment in respect to such excess may be payable at the option of the company either in one payment or in equal annual installments covering as many years as do the compensation installments payable to the dependents, the first of which shall be due and payable as soon as assessed. A default for sixty days in the payment of any installment shall in itself cause all other unpaid installments to become immediately due and payable. Any assessment authorized by this Act and made by the company against a person, including such unpaid installments, shall constitute a legal liability against him and in the event of his insolvency shall be entitled to a preference subject to claims al-

ready preferred by law over the unsecured debts of the member. All funds of the company and the contingent liability of the policyholders thereof, shall be available for the payment of any claim against the company.

§ 15. Advances—Repayment.—Any director, officer or member of any such company or of any other company may advance to the company any sum or sums of money necessary for the purpose of its business or to enable it to comply with any requirements of the law, and when so agreed such sums and the interest thereon shall not be a liability of the company or a claim against its assets, and shall be repaid only out of the surplus earnings of the company. No commission or promotion expenses shall be paid in connection with the organization of any such company or the advance of any such money to the company, and the amount of such advances shall be reported in each annual statement to the Commissioner of Insurance. Where the employments are grouped as provided in this Act, such advances may be to a group.

§ 16. Refunds.—After the payment of all expenses, losses and other liabilities and providing for the maintaining the required reserves or if the employments are grouped then after the payment of all expenses, losses and other liabilities of a group, the directors may make refunds to the members or to the members of a group as the case may be, under the following conditions:

1. All sums advanced to the company under any agreement that the same should not be a liability of the company or a claim against its assets, with interest thereon, shall be first repaid to the parties advancing the same.

2. The directors shall next set aside any amounts which may be provided by the by-laws as a surplus or other fund, and

3. The balance, if any, shall be distributed as refunds to the members in proportion to the amount of earned premiums paid by them on the policy in force at the time the refund is declared.

Any director knowingly voting to pay or paying any dividend or refund in violation of the provisions of this Act shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by imprisonment in the county jail for not less than one week nor more than one year.

§ 17. Dissolution of company—Distribution of assets.—Any such company may be dissolved by two-thirds of the votes of its members at a meeting called for the purpose, a copy of the minutes of which meeting, verified by the affidavit of the president, shall be filed with the Commissioner of Insurance and the Secretary of State. Upon the filing thereof the title to all of the assets of the company shall immediately vest in the Commissioner, who shall proceed to take possession of the same and all the books and records of the company, and out of the proceeds thereof pay all of the costs of such administration, pay or provide for all its liabilities, pro rata if there be not sufficient assets to pay in full and distribute the balance in the following manner:

1st. Out of said balance he shall first pay all sums advanced to the company under any agreement that the same shall not be a liability of the company or a claim against its assets, with interest thereon.

2nd. The balance, if any, shall be paid to the members in proportion to the amount of earned premiums paid by them on the policy in force at the time the dissolution is voted.

3rd. If the employments are grouped, the distribution shall be according to the groups and to the members insured therein.

§ 18. **Companies not organized under Act.**—No mutual insurance company organized under the laws of this state shall insure liability under any workmen's compensation law of this state unless such company be organized under this act and such liability shall be insured by corporations only.

§ 19. **Exemption from Insurance Code.**—Any and all companies organized under this act shall be exempt from the provisions of section 16 of Chapter 99 of the Laws of 1913, known as "An Act to provide an insurance code for the State of Colorado," to the same extent as mutual fire insurance companies are by said section exempted from its provisions.

§ 20. **Repeal.**—All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

§ 21. **Necessity of Act.**—It is hereby declared that this Act is necessary for the immediate preservation of the public peace, health and safety.

§ 22. **When effective.**—In the opinion of the General Assembly an emergency exists; therefore, this Act shall take effect and be in force immediately after its passage.

CONNECTICUT

WORKMEN'S COMPENSATION ACT

Section

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2. Scope of Part A.

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Section

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WORKMEN'S COMPENSATION ACT

(P. A. 1913, c. 138, as amended by P. A. 1915, c. 288.)

Be it enacted by the Senate and House of Representatives in General Assembly convened:

PART A.—EMPLOYERS' LIABILITY

§ 1. Defenses abolished.—In an action to recover damages for personal injury sustained by an employé arising out of and in the course of his employment, or for death resulting from injury so sustained, it shall not be a defense: (a) That the injured employé was negligent; (b) that the injury was caused by the negligence of a fellow employé; (c) that the injured employé had assumed the risk of injury.

§ 2. Scope of part A.—The provisions of section one of part A of this act shall not apply to actions to recover damages for personal injuries sustained by employés of any employer having regularly less than five employés, by casual employés, or by outworkers; nor shall the same provisions apply to actions against any employer who shall have accepted part B of this act in the manner hereinafter prescribed.

PART B. WORKMEN'S COMPENSATION

§ 1. Acceptance of part B.—When any persons in the mutual relation of employer and employé shall have accepted part B of this act, the employer shall not be liable to any action for damages on account of personal injury sustained by an employé arising out of and in the course of his employment or on account of death resulting from injury so sustained; but the employer shall pay compensation on account of such injury in accordance with the scale hereinafter provided, except that no compensation shall be paid when the injury shall have been caused by the willful and serious misconduct of the injured employé or by his intoxication. The acceptance of part B of this act by employers and employés shall be understood to include the mutual renunciation and waiver of all rights and claims arising out of injuries sustained in the course of employment as aforesaid, other than rights and claims given by part B of this act, including the right of jury trial on all questions affecting compensation and all right of appeal from the compensation commissioners except as hereinafter established.

§ 2 (as amd.). Acceptance presumed except in cases of employers of less than five—Employer of less than five, manner of acceptance by.—All contracts of employment between an employer and an employé, as such terms are defined in section forty-three of part B, except those made between an employer having regularly less than five employés and any such employé, whether made before this act goes into effect and continued in force after such time or made thereafter, shall be conclusively presumed to include a mutual agreement between employer and employé to accept part B of said act and become bound thereby, unless either employer or employé shall, by written stipulation in the contract, or by such notice as is prescribed in section three of said part B, indicate his refusal to accept the provisions of said part B. No provision of said part B shall apply to any employer having regularly less than five employés unless such employer shall, in the manner hereinafter provided, accept the provisions of part B and become bound thereby. All contracts of employment between an employer having regularly less than five employés and any such employé, whether made before this act goes into effect and continued in force after such time or made thereafter, shall be conclusively presumed to include the following mutual agreements between employer and employé: (1) That the employer may

accept the provisions of part B and become bound thereby by giving written or printed notice of his acceptance to the employé and to the compensation commissioner of the district in which the employé is employed; provided such acceptance shall not be effective, unless it is accompanied by a certificate of a stock or mutual insurance company or association authorized to take such risks in this state, that the employer has insured his full liability under part B and that the policy of insurance is in accordance with the requirements of part B; (2) that if the employer accepts the provisions of part B the employé shall thereupon be deemed to accept such provisions and shall become bound thereby; (3) that the employé may at any time withdraw his acceptance of such provisions and become released therefrom by giving written or printed notice of such withdrawal to the commissioner having jurisdiction, and also to the employer, and such withdrawal shall take effect forthwith from the time of its service on the commissioner and the employer; and (4) that the employer may withdraw his acceptance and the acceptance of the employé by filing a written or printed notice of his withdrawal with such commissioner and with such employé, which withdrawal shall become effective forthwith from the time of its service on the commissioner and the employé. The notices of acceptance and withdrawal to be given by an employer having regularly less than five employés and the notice of withdrawal to be given by the employé, as herein provided, shall be served upon such commissioner, employer, or employé, either by personal presentation or by registered mail; and notices in behalf of a minor shall be given by his parent or guardian, or, if there be no parent or guardian, by such minor. The manner of acceptance of or withdrawal from the provisions of part B shall not apply to employers having regularly less than five employés or to such employés.

§ 3. Manner of acceptance and withdrawal.—Acceptance of part B of this act may be withdrawn by written or printed notice from either employer or employé to the other party and to the compensation commissioner of the district in which the employé is employed. Notice of withdrawal may be served by personal presentation or by registered letter addressed to the person on whom it is to be served at his last known residence or place of business, and such notice shall become effective thirty days after service. Either employer or employé who has withdrawn acceptance may renew the same by the same notice and procedure as is prescribed for withdrawals. Notices in behalf of a minor shall be given by his parent or guardian, or, if there be no parent or guardian, then by such minor.

§ 4. Effect of non-acceptance.—Every employer not accepting part B of this act shall be liable to action for damages on account of personal injury to his employés in accordance with the provisions of part A of this act, and every employé not accepting part B of this act shall lose all rights and benefits of part A of this act with reference to any employer who continues to accept said part B.

§ 5. Principal employer, contractor and sub-contractor.—When any principal employer procures any work to be done, wholly or in part for him, by a contractor, or through him by a sub-contractor, and the work so procured to be done is a part or process in the trade or business of such principal employer, and is performed in, on, or about premises under his control, then such principal employer shall be liable to pay all compensation un-

der this act to the same extent as if the work were done without the intervention of such contractor or sub-contractor.

§ 6 (as amd.). Liability of third persons.—When any injury for which compensation is payable under the provisions of this act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employé may claim compensation under the provisions of this act, but the payment or award of compensation shall not affect the claim or right of action of such injured employé against such other person, whether injured prior or subsequent to the time this act goes into effect, but such injured employé may proceed at law against such person to recover damages for such injury; and any employer having paid, or by award having become obligated to pay, compensation under the provisions of this act may bring an action against such other person to recover any amount that he has paid or by award has become obligated to pay as compensation to such injured employé; provided if either such employé or such employer shall bring such action against such third person he shall forthwith notify the other, in writing, by personal presentation or by registered mail, of such fact and of the name of the court to which the writ is returnable, and such other may join as a party plaintiff, in such action within thirty days after such notification, and if such other fails to join as a party plaintiff, his right of action against such third person shall abate. In the event that such employer and employé shall join as parties plaintiff in such action and any damages are recovered, such damages shall be so apportioned that the claim of the employer shall take precedence over that of the injured employé, and if the damages shall not be sufficient, or shall be only sufficient to reimburse him for the compensation which he has paid, or by award has become obligated to pay, with a reasonable allowance for an attorney's fee, to be fixed by the court, and his costs, such damages shall be assessed in his favor; but if the damages shall be more than sufficient to reimburse him, damages shall be assessed in his favor sufficient to reimburse him for the money he has paid, with a reasonable allowance for an attorney's fee, to be fixed by the court, and his costs, and the excess shall be assessed in favor of the injured employé. The provisions of this section shall apply to any action brought by such injured employé or employer to recover damages against such third person which may be pending at the time of the passage of this act.

§ 7 (as amd.). Medical and surgical care.—Any employé who has sustained an injury in the course of his employment shall forthwith notify his employer, or some person representing him, of such injury; and on his failure to give such notice, the commissioner may reduce the award of compensation proportionately to any prejudice which he shall find the employer has sustained by reason of such failure; but the burden of proof with respect to such prejudice shall rest upon the employer. The employer, as soon as he has knowledge of any such injury, shall provide a competent physician or surgeon to attend the injured employé, and in addition shall furnish such medical and surgical aid or hospital service as such physician or surgeon shall deem reasonable or necessary. In the event of the failure of the employer promptly to provide such physician or surgeon or medical, surgical, or hospital service, the injured employé may provide such physician or surgeon or medical, surgical, or hospital service at the expense of the employer;

or, at his option, the injured employé may refuse the medical, surgical, and hospital service provided by his employer and provide the same at his own expense. If it shall appear to the commissioner that an injured employé has refused to accept or failed to provide such reasonable medical, surgical, or hospital service, all rights of compensation under the provisions of this act shall be suspended during such refusal or failure. The pecuniary liability of the employer for the medical, surgical, or hospital service herein required shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured persons. In the case of a seaman employed upon any enrolled vessel of the United States and entitled, by the provisions of any law of the United States, to medical or surgical aid or hospital service without charge, such medical or surgical aid or hospital service may be substituted for that provided for in this section so far as it may answer the requirements of the provisions of this section, but nothing herein shall excuse the employer in such cases from giving emergency treatment when required; and any employer desiring to take advantage of this provision shall ascertain that such services as are provided for by the laws of the United States are rendered.

§ 8 (as amd.). Waiting period.—No compensation shall be payable under the provisions of this act on account of any injury which does not incapacitate the injured employé for a period of more than ten days from earning full wages at his regular employment; but if incapacity extends beyond a period of ten days compensation shall begin on the eleventh day of such incapacity.

§ 9 (as amd.). Compensation for fatal injuries.—Compensation shall be paid on account of death resulting from injuries within two years from date of injury as follows: (a) For burial expenses one hundred dollars; (b) to those wholly dependent upon the deceased employé at the time of his injury a weekly compensation equal to half of the average weekly earnings of the deceased at the time of his injury; (c) in case there is no one wholly dependent upon the deceased employé, to those partially dependent upon the deceased employé at the time of his injury a weekly compensation not exceeding that payable to those wholly dependent and in such proportionate sum as may be determined according to the measure of dependence; but the compensation payable on account of death resulting from injuries shall in no case be more than ten dollars or less than five dollars weekly, and such compensation shall not continue longer than three hundred and twelve weeks after death. The compensation on account of death payable under the provisions of this act to a widow or widower of a deceased employé shall not cease with the death of such widow or widower, but upon her or his death within the period during which such compensation is payable it shall continue to be paid for the remainder of such period to her or his dependents as defined in section forty-three.

§ 10 (as amd.). Meaning of dependence.—The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employé: (a) A wife upon a husband with whom she lives at the time of his injury or from whom she receives support regularly; (b) a husband upon a wife with whom he lives at the time of her injury or from whom he receives support regularly; (c) any child under the age of eighteen years, or

over said age but physically or mentally incapacitated from earning, upon the parent with whom he is living or from whom he is receiving support regularly at the time of the injury of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent the death benefit shall be divided equally among them. In all other cases, questions of dependency shall be determined in accordance with the fact, as the fact may be at the time of the injury. In such other cases, if there is more than one person wholly dependent, the compensation in case of death shall be divided equally among them, and persons partially dependent, if any, shall receive no part thereof. If there is no person wholly dependent and more than one person partially dependent, the compensation in case of death shall be divided among them according to the relative degree of their dependence. For the purposes of this act the dependence of a widow or widower of a deceased employé shall be construed to terminate with remarriage, but upon remarriage within the period during which such compensation is payable, it shall continue to be paid for the remainder of such period to other dependents of the deceased employé, as defined in section forty-three of part B, provided there are any such dependents. The presumptive dependence of a child as hereinbefore defined, except a child physically or mentally incapacitated from earning, shall be construed to terminate at the age of eighteen years. Compensation under the provisions of this act shall be paid to alien dependents in half the amounts indicated in this act, unless such alien dependents are residents of the United States, or its dependencies, or Canada, such alienage to be determined as of the date of the injury.

§ 11 (as amd.). Compensation for total incapacity.—In case the injury results in total incapacity to work, there shall be paid to the injured employé a weekly compensation equal to half of his average weekly earnings at the time of the injury; but the compensation shall in no case be more than ten dollars or less than five dollars weekly; and such compensation shall not continue longer than the period of total incapacity, or in any event longer than five hundred and twenty weeks. The following injuries of any person shall be considered as causing total incapacity and compensation shall be paid accordingly: (a) Total and permanent loss of sight in both eyes, or the reduction to one-tenth or less of normal vision with glasses; (b) the loss of both feet at or above the ankle; (c) the loss of both hands at or above the wrist; (d) the loss of one foot at or above the ankle and one hand at or above the wrist; (e) any injury resulting in permanent and complete paralysis of the legs or arms or of one leg and one arm; (f) any injury resulting in incurable imbecility or insanity.

§ 12 (as amd.). Compensation for partial incapacity.—In case the injury results in partial incapacity, there shall be paid to the injured employé a weekly compensation equal to half the difference between his average weekly earnings before the injury and the amount he is able to earn thereafter. Such compensation shall in no case be more than ten dollars weekly and shall continue during the period of partial incapacity, but not longer than three hundred and twelve weeks. If the employer procures for an injured employé employment suitable to his capacity the wages offered in such employment shall be taken as the earning capacity of the injured employé. In case of the following injuries the compensation, in lieu of all other payments, shall be half of the average weekly earnings of the injured employé

prior to such injury for the terms respectively indicated, but in no case more than ten dollars or less than five dollars weekly: (a) for the loss of one arm at or above the elbow, or the complete and permanent loss of the use of one arm, two hundred and eight weeks; (b) for the loss of one hand at or above the wrist, or the complete and permanent loss of the use of one hand, one hundred and fifty-six weeks; (c) for the loss of one leg at or above the knee, or the complete and permanent loss of the use of one leg, one hundred and eighty-two weeks; (d) for the loss of one foot at or above the ankle, or the complete and permanent loss of the use of one foot, one hundred and thirty weeks; (e) for the complete and permanent loss of hearing in both ears, one hundred and fifty-six weeks; (f) for the complete and permanent loss of hearing in one ear, fifty-two weeks; (g) for the complete and permanent loss of sight in one eye, or the reduction in one eye to one-tenth or less of normal vision with glasses, one hundred and four weeks; (h) for the loss of, or the complete and permanent loss of the use of, a thumb, thirty-eight weeks; (i) for the loss of or the complete and permanent loss of the use of, a first finger or a great toe, thirty-eight weeks; (j) for the loss of, or the complete and permanent loss of the use of, a second finger, thirty weeks; a third finger, twenty-five weeks; a fourth finger, twenty weeks; (k) for the loss of, or the loss of the use of, any toe except the great toe, thirteen weeks; the loss of, or the loss of the use of, one phalanx of a thumb shall be construed as half of the loss of the thumb; the loss of, or the loss of the use of, one phalanx of a finger shall be construed as one-third of the loss of the finger; for the loss of, or the loss of the use of, two phalanges of a finger shall be construed as two-thirds of the loss of the finger; and the loss of the greater part of a phalanx shall be construed as the loss of the phalanx; and shall be compensated accordingly.

§ 13. Average weekly earnings.—For the purposes of this act, the average weekly wage shall be ascertained by dividing the total wages received by the injured workman from the employer in whose service he is injured during the twenty-six calendar weeks immediately preceding that during which he was injured, by the number of said calendar weeks during which, or any portion of which, said workman was actually employed by said employer, provided in making such computation absence for seven consecutive calendar days, although not in the same calendar week, shall be considered as absence for a calendar week. Where the employment commenced other than at the beginning of a calendar week, such calendar week and the wages earned during such week, shall be excluded in making the above computation. Where the employment previous to injury as provided above is computed to be less than a net period of two calendar weeks, then his weekly wage shall be considered to be equivalent to the average weekly wage prevailing in the same or similar employment in the same locality at the time of injury.

§ 14. Allowance for advance payments.—In fixing the amount of compensation under this act due allowance shall be made for any sum which the employer may have paid to any injured employé or to his dependents on account of the injury, except such sums as the employer may have expended or directed to be expended for medical, surgical, or hospital service.

§ 15 (as amd.). Revision of awards.—Any award of or voluntary agreement concerning compensation made under this act shall be subject to modi-

fication, upon the request of either party and in accordance with the procedure for original determinations, whenever it shall appear to the compensation commissioner that the incapacity of an injured employé has increased, decreased, or ceased, or that the measure of dependence, on account of which the compensation is paid, has changed, or that changed conditions of fact have arisen which necessitate a change of such agreement or award in order to properly carry out the spirit of this act. The commissioner shall also have the same power to open and modify an award as any court of the state has to open and modify a judgment of such court.

§ 16. Appointment and term of compensation commissioners.—Within ninety days after the passage of this act the governor shall appoint five competent persons, one for each of the five congressional districts as at present constituted, to be known as compensation commissioners, and shall designate one of them as chairman. The term of office of the compensation commissioners shall be five years, except that when first appointed one shall be appointed for one year and three months from October 1, 1913, one for two years and three months from said date, one for three years and three months from said date, one for four years and three months from said date, and one for five years and three months from said date. Thereafter, upon the expiration of the term for which a commissioner is first appointed, his successor shall be appointed by the governor for the full term of five calendar years. After due notice and public hearing the governor may remove any commissioner for cause and the good of the public service. Said commissioners shall be sworn to a faithful performance of their duties. Vacancies occurring during a term shall be filled by the governor.

§ 17 (as amd.). Powers of commissioners.—Each commissioner shall, for the purposes of this act, have power to summon and examine under oath such witnesses, and may direct the production of, and examine or cause to be produced or examined, such books, records, vouchers, memoranda, documents, letters, contracts, or other papers in relation to any matter at issue as he may find proper, and shall have the same powers in reference thereto as are vested in magistrates taking depositions. He shall have power to certify to official acts, and all powers necessary to enable him to perform the duties imposed upon him by the provisions of this act. The commissioners shall reside in the districts for which they are severally appointed and each shall have jurisdiction of all claims and questions arising in such district under part B of this act. The commissioner for the first congressional district shall maintain an office at some convenient location in the city of Hartford; the commissioner for the second district, an office similarly located in the city of Norwich; the commissioner for the third district, in the city of New Haven; the commissioner for the fourth district, in the city of Bridgeport; and the commissioner for the fifth district, in the city of Waterbury. Each commissioner shall keep his office open during reasonable business hours of every day except Sundays and legal holidays, but may hear and decide cases at any other place within his district. In case a commissioner is disqualified or temporarily incapacitated from hearing any matter, he shall designate some other commissioner to hear and decide such matter and such other commissioner shall possess the same jurisdiction and power, for the purpose of such hearing, as such incapacitated or disqualified commissioner. The superior court, on application of a commissioner or the commis-

sion, or of the attorney-general, may enforce, by appropriate decree or process, any provision of this act or any proper order of a commissioner or the commission rendered in pursuance of any such provision.

§ 18. The Board of Commissioners—Annual report.—Acting together, the commissioners shall have power to adopt and change such common rules, procedure, and forms as they shall deem expedient for the purposes of this act. Annually the commissioners shall prepare and submit to the governor a report of their doings, including such recommendations as they shall think proper for the improvement of this act or its administration.

§ 19 (as amd.). Salaries and expenses of commissioners.—Each of the commissioners shall receive a salary of four thousand dollars per annum, payable in equal monthly installments, and in addition, such allowance, not exceeding three thousand dollars per annum, as may be approved by the comptroller for expenses incurred in the discharge of his duties, and said provision for expenses of commissioners shall also apply to expenses heretofore incurred by said commissioners as to the amount thereof incurred in any year.

§ 20 (as amd.). Reports of accidents.—Every employer who has accepted part B of this act shall keep a record of such injuries sustained by his employes in the course of their employment as result in incapacity for one day or more; and every such employer shall send each week to the commissioner such report of such injuries, in duplicate, as the commissioner shall require, with such notices of claims for compensation as have been served upon him within one week, in conformity with the provisions of section twenty-one. Within one week after the termination of disability or death of any injured person to whom compensation has been paid under the provisions of this act, the employer shall make a supplementary report, in duplicate to the commissioner in regard to the length of disability, the amount of compensation paid and such other facts relative to the same as may be required by the compensation commissioners to make a complete report upon the operations and economic effects of this act. The duplicates of such reports shall be transmitted by the commissioner to the factory inspector. All forms for reports required under the provisions of this section shall be furnished to employers by the commissioner without charge. No other reports of injuries or compensation shall be required by any department or office of the state from such employers as have accepted part B.

§ 21 (as amd.). Claims for compensation.—No proceedings for compensation under the provisions of this act shall be maintained unless a written notice of claim for compensation is made within one year from the date of the injury. Such notice shall state in simple language the date, place, and nature of the injury, the name and address of the injured employe, and the person in whose interest compensation is claimed. Notices may be served in the same manner as notices of withdrawal from the provisions of part B of this act; and, in cases of fatal injuries, notice may be served either by any one of the dependents under the provisions of this act as provided in section three thereof or by the legal representative of the deceased employe; but where there has been a hearing or a written request for a hearing or an assignment for hearing within one year from the date of the injury, or where a voluntary agreement has been submitted within said period of one year, no want of such notice of claim shall be a bar to the maintenance of pro-

ceedings and in no case shall any defect, or inaccuracy of such notice of claim be a bar to the maintenance of proceedings unless the employer shall show that he was ignorant of the injury and was prejudiced thereby. Upon satisfactory showing of such ignorance and prejudice, the employer shall receive allowance to the extent of such prejudice. Within one week after the receipt by an employer of such notice of claim for compensation he shall report the substantial facts of such notice to the commissioner.

§ 22 (as amd.). Voluntary agreements.—If an employer and an injured employé, or in case of fatal injury his legal representative, shall, not earlier than two weeks after the date of the injury, reach an agreement in regard to compensation, such agreement shall, by the employer, be submitted in writing to the commissioner, with a statement of the time, place, and nature of the injury upon which it is based; and if said commissioner shall find such agreement to conform to the provisions of this act in every regard he shall so approve it. Every agreement thus approved shall be filed in the office of the clerk of the superior court for the county in which the injury occurred if such injury occurred within this state; otherwise in the office of the clerk of the superior court for the county in which the office of the commissioner making the award is located. A copy of such agreement shall be retained by the commissioner, and a like copy delivered to each of the parties, and thereafter it shall be as binding upon both parties as an award by the commissioner.

§ 23. Medical examinations.—At any time while claiming or receiving compensation, upon the reasonable request of the employer or at the direction of the commissioner, an injured employé shall submit himself to examination by a reputable practicing physician or surgeon provided and paid by the employer, with a view to a determination of the nature of the injury and the incapacity resultant therefrom. At any such examination the injured employé shall be allowed to secure the attendance of any reputable practicing physician or surgeon provided and paid by himself. The refusal of an injured employé thus to submit himself to a reasonable examination shall suspend his right to compensation during such refusal.

§ 24. Hearing of claims.—If an employer and his injured employee, or his legal representative, as the case may be, shall fail to reach an agreement in regard to compensation under this act, either party may notify the commissioner of the failure. Upon such notice, or upon other knowledge that an agreement has not been reached in a case in which compensation is claimed, the commissioner shall appoint an early hearing upon the matter, giving both parties due notice of time and place not less than ten days prior to the date appointed. Hearings shall be held, if practicable, in the town in the state in which the injured employee resides; and, if such place is not practicable, in such other convenient place as the commissioner may prescribe. Sufficient notice of such hearing may be given to the parties in interest by a brief written statement in ordinary terms of the date, place, and nature of the injury upon which the claim for compensation is based.

§ 25 (as amd.). Conduct of hearings.—Both parties may appear at any hearing, either in person or by attorney or other accredited representative, and no formal pleadings shall be required, beyond such informal notices as the commission shall approve. In all cases and hearings under the provisions of this act the commissioner shall proceed, so far as possible, in accordance

with the rules of equity. He shall not be bound by the ordinary common law or statutory rules of evidence or procedure, but may make inquiry in such manner, through oral testimony or written and printed records, as is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit of this act. No fees shall be taxed or charged to either party by the commissioner in connection with any hearing or other procedure, but the commissioner shall furnish at cost certified copies of any testimony, award, or other matter which may be of record in his office. Witnesses subpoenaed by the commissioner shall be allowed such fees and traveling expenses as are allowed in civil actions, to be paid by the party in whose interest such witnesses are subpoenaed.

§ 26 (as amd.). Award of compensation.—As soon as may be after the conclusion of any hearing the commissioner shall send to each party a written copy of his finding and award and shall file a third copy in his office. The original award shall be filed in the office of the clerk of the superior court for the county in which the injury occurred if such injury occurred within this state. If such injury occurred outside of the state and under such circumstances as to authorize an award under the provisions hereof, the original award may be filed in the office of the clerk of the superior court in the county in which the office of the commissioner making the award is located. If no appeal from his decision is taken by either party within ten days thereafter, such finding and award shall be final and may be enforced in the same manner as a judgment of the superior court. The superior court is hereby authorized to issue execution upon any uncontested or final award of a commissioner in the same manner as in cases of judgments rendered in the superior court.

§ 27 (as amd.). Appeals.—At any time within ten days after entry of such finding and award by the commissioner either party may appeal therefrom to the superior court for the county in which the award was filed. The clerk of said court shall notify the adverse party of such appeal. No bond for prosecution shall be required on any such appeal unless property of the defendant is attached therein. Actions brought into the superior court under the provisions of this section shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by or on behalf of the state, including informations on the relation of private individuals. No costs shall be taxed in favor of either party on any such appeal either in the superior court or in the supreme court of errors, nor shall either party be liable to pay any fees or costs of any kind whatsoever, except the record fee on appeal to the supreme court of errors.

§ 28 (as amd.). Commutation into lump sum.—When he finds it just or necessary the commissioner may approve or direct the commutation, in whole or in part, of weekly compensations under the provisions of this act into monthly or quarterly payments, or into a single lump sum, which may be paid to the one then entitled to the compensation, and such commutation shall be binding upon all persons who may be entitled to compensation for the injury in question. In any such case of commutation, a true equivalence of value shall be maintained, with due discount of sums payable in the future; and when commutation is made into a single lump sum, the commissioner may direct that it be paid into any savings bank, trust company, or

life insurance company which is authorized to do business within this state, to be held in trust for the beneficiary or beneficiaries under the provisions of this act, and paid in conformity with the provisions of this act.

§ 29. Substitute systems of compensation.—With the approval of the state insurance commissioner any employer subject to the provisions of part B may enter into an agreement with his employees to provide a system of compensation, benefit, and insurance in lieu of the compensation and insurance provided by this act. No such substitute system shall be approved unless it confers benefits upon injured employees at least equivalent to the benefits provided by this act, nor shall any such substitute system be approved which contains an obligation of employees to join in it as a condition of employment, or which in that case does not contain equitable provision for the withdrawal of employees from it and the distribution of its assets. If any such system requires contributions from employees it shall not be approved unless it confers benefits in addition to those provided under this act at least commensurate with such contributions. The insurance commissioner, having given his approval of such substitute system, shall have over it all the jurisdiction given him by chapter 186 of the public acts of 1909 over insurance companies. He may withdraw his approval upon reasonable notice to the employer and order a distribution of the assets, subject to the right of any party in interest to take an appeal to the superior court for Hartford county.

§ 30. Insurance of compensation liability.—Every employer subject to part B who shall not furnish to the commissioner satisfactory proof of his solvency and financial ability to pay directly to injured employees or other beneficiaries the compensation provided by this act, shall insure his full liability under part B in one or both the following ways: (1) By filing with the insurance commissioner in form acceptable to him security guaranteeing the performance of the obligations of this act by said employer; or, (2) by insuring his full liability under part B of this act in such stock or mutual companies or associations as are or may be authorized to take such risks in this state, or by such combination of the above-mentioned two methods as he may choose, subject to the approval of the insurance commissioner.

§ 31. Requirements in insurance policies.—Every policy insuring the payment of compensations under this act shall contain a clause to the effect that as between the employee and the insurer notice and knowledge of the occurrence of injury by the insured shall be deemed notice and knowledge by the insurer, that jurisdiction of the insured for the purposes of this act shall be jurisdiction of the insurer, and that the insurer shall in all things be bound by and subject to the findings, judgments, and awards rendered against such insured.

§ 32 (as amd.). Same.—No policy of insurance against liability under part B of this act, except as provided in section thirty, shall be made unless the same shall cover the entire liability of the employer thereunder and shall contain an agreement by the insurer that, in case the insured shall become insolvent or be discharged in bankruptcy during the period that the policy is in operation, or the compensation, or any part of it, is due and unpaid, or in case an execution upon a judgment for compensation is returned unsatisfied, an injured employee, or other person entitled to compensation under the provisions of this act, may enforce his claim to compensation against the

insurer to the same extent that the insured could have enforced his claim against such insurer had he paid compensation. Nothing herein contained shall prevent the issuance of an insurance policy, insuring any employer having ordinarily and regularly less than five employees against such liability under part B of this act as he may incur by reason of employing five or more employees at irregular intervals or from time to time.

§ 33. **Obligations not to be evaded.**—No contract, expressed or implied, no rule, regulation, or other device, shall in any manner relieve any employer, in whole or in part, of any obligation created by this act, except as herein set forth.

§ 34 (as amd.). **Action for minors and incompetents.**—When any employee affected by the provisions of this act, or any person entitled to compensation hereunder, shall be a minor, or mentally incompetent, his parent, or guardian duly appointed, may, on his behalf, perform any act or duty required or exercise any right conferred by the provisions of this act with the same effect as if such person were legally capable to act in his own behalf and had so acted. The commissioner may, for just cause shown, authorize or direct the payment of compensation directly to a minor, or to some person nominated by the minor and approved by the commissioner, which person shall act in behalf of such minor.

§ 35. **Fees to be approved.**—All fees of attorneys, physicians, or other persons for service under this act shall be subject to the approval of the commissioner.

§ 36. **Exemption and preference of compensations.**—All sums due for compensation under this act shall be exempt from levy, attachment, and execution and shall be nonassignable before or after award. The rights of compensation granted by this act shall have the same preference against the assets of an employer as may be allowed by law to a claim for unpaid wages.

§ 37. **Payments of compensation.**—Compensations payable under this act shall be paid at such particular times in the week and in such manner as the commissioner may order, and shall be paid directly to the persons entitled to receive them unless the commissioner, for good reasons, shall order payment to those entitled to act for such persons.

§ 38. **Manner of serving notices.**—Any notice under this act required to be served upon employer, employee, or commissioner may be served in the manner prescribed in section three of part B of this act, unless the circumstances of the case or the rules of the commission shall direct otherwise.

§ 39. **Custody of forms.**—The town clerks of the several towns are hereby authorized and directed to receive from the commission such blank forms as may be prepared for use under this act and to distribute the same to persons making proper application for them.

§ 40. **Interstate commerce.**—This act shall not affect the liability of employers to employes engaged in interstate or foreign commerce, for death or injury in case the laws of the United States provide for compensation or for liability for such death or injury.

§ 41. **Previous injuries and actions.**—The provisions of this act shall not apply to injuries or actions brought on account of injuries sustained before January 1, 1914.

§ 42 (as amd.). **Failure to observe Act.**—If an employer has accepted part B of this act and thereafter fails to conform to any provision of section

thirty of part B, an employé shall have the option to elect, either to claim his right to compensation under the terms of this act, or to bring an action to recover damages under the terms of part A. If the injury sustained results in death, the option to elect shall be exercised by those persons entitled to compensation under the terms of section nine of part B. In the event of a failure by such persons to agree upon the election, the commissioner shall decide and his decision shall be final. The option to elect to bring an action to recover damages under the terms of part A shall be exercised by notifying the employer within thirty days after receiving the injury upon which such claim is based, and such action shall be brought within one year from the date of such injury. If the employer is not so notified, there shall remain only the right to compensation under the terms of this act. If an employer has accepted part B of this act and thereafter fails to conform to any provision of part B, he shall be fined not more than one hundred dollars for each such failure.

§ 43 (as amd.). Definitions.—"Commissioner" shall mean that compensation commissioner, as constituted in this act, who has jurisdiction in the matter referred to in the context. "Commission" shall mean the five commissioners, or a majority of them, acting as a board. "Dependents" shall mean members of the injured employé's family or next of kin who were wholly or partly dependent upon the earnings of the employé at the time of the injury. "Employé" shall mean any person who has entered into or works under any contract of service or apprenticeship with an employer, whether such contract contemplated the performance of duties within or without the state. It shall not be construed to include either (a) an outworker, or (b) one whose employment is of a casual nature, and who is employed otherwise than for the purposes of the employer's trade or business, or (c) a member of the employer's family dwelling in his house. "Employer" shall mean any person, corporation, firm, partnership, or joint stock association, the state, and any public corporation within the state using the services of another for pay; it shall include also the legal representative of any such employer. Masculine terms include males, females, and legal persons. "Outworker" shall mean a person to whom articles or materials are given to be treated in any way on premises not under the control or management of the person who gave them out. As the natural interpretation of the context may require, singular terms may be taken to include the plural, and plural to include the singular.

§ 44. Unconstitutionality.—In case any provision of this act shall be held by the courts to be unconstitutional and invalid, the invalidity of such provision shall not affect any other provision which can be given effect without the provision held invalid.

PART C.—EMPLOYERS' MUTUAL INSURANCE

§ 1. Mutual associations authorized.—With the approval of the insurance commissioner, employers who have accepted the provisions of part B of this act and are bound to pay compensations to their employés thereunder, may associate themselves, in accordance with the law for the formation of corporations without capital stock, for the purpose of establishing and maintaining mutual associations to insure their liabilities under this act, but no such association shall be formed to include employers not in the same or similar

trade or business, or in trades or businesses with substantially similar degrees of hazard of injury to employes.

§ 2. Approval by insurance commissioner.—With a view to his approval, the insurance commissioner may require the incorporators of any such association to include in their proposed certificate of incorporation such lawful provisions for the regulation of the affairs of the association and the definition of its powers and the powers of its officers, directors, and incorporators as shall satisfy him that it is well designed and wisely adapted to its proposed purposes. When such a certificate, in form and substance acceptable to the insurance commissioner, has been approved by and filed with the secretary of the state, the incorporators shall forthwith cause copies thereof to be filed in the offices of the insurance commissioner and each of the compensation commissioners.

§ 3. Membership.—Membership in such associations shall be limited to such employers as are subject to part B of this act, and each association shall have power, by appropriate by-laws, to provide for the admission, suspension, withdrawal, or expulsion of members.

§ 4. Control of associations.—Except as herein otherwise provided, such associations shall be subject to the same regulation and control as is or may be imposed by law upon other corporations or associations taking similar risks in this state, and over them the insurance commissioner shall have all the jurisdiction given him by chapter 186 of the public acts of 1909 over insurance companies.

§ 5. Policies.—No policies shall be issued by any such association until members in such numbers and with such numbers of employes as the insurance commissioner may decide will give a fair diffusion of risks shall have obligated themselves to take policies immediately upon their authorization, nor shall any policies be issued except such as the insurance commissioner shall have approved as conforming in all respects to the requirements of this act. Conformably to the provisions of section thirty of part B of this act, policies may be issued covering claims only in excess of a certain amount. If at any time, by the retirement of members, reduction of numbers of employes, or other cause, the membership of any association shall appear to the insurance commissioner no longer to afford a fair diffusion of risks, he may suspend or forbid the further issue of policies until the former conditions of the association have been restored.

§ 6. Officers and voting.—The affairs of all associations incorporated under this act shall be managed by such officers and directors as may be chosen in manner prescribed by the by-laws of the association, provided every member shall be entitled to cast at least one ballot in all elections and votes, that any member having had for six months an average of more than one hundred and not more than five hundred employes to whom he is bound to pay compensation under this act shall be entitled to cast two ballots, that each additional five hundred employes shall entitle such member to an additional ballot, and that no member shall be entitled to cast more than eight ballots.

§ 7. Safety rules.—Each association shall have power to prescribe and enforce reasonable rules for safety regulations on the premises of its members, and for that purpose, its inspectors shall have free access to all such premises during regular working hours.

§ 8. Premiums.—Each association shall have power to determine the comparative premium rates for each occupation or risk insured by it and to pre-

scribe the rates of cash premiums sufficient to cover the current cost. Said premium rates shall prevail for the fiscal year of the association, but annually they may be changed at any time by the directors. The current cost herein specified shall be such an amount as is estimated to cover the expenses and the claims or portions of claims payable within the same fiscal year within which they originated. Members of each association shall be required to pay yearly in advance cash premiums for current costs, and in addition thereto an amount in negotiable notes sufficient to maintain a reserve equal to that required of stock or commercial casualty companies by the general statutes for similar classes of risks. These notes shall be payable on the call of the treasurer of the association, as they may be required to meet estimated losses or expenses in excess of the current cost or to meet claims covering losses not payable within the same fiscal year within which the claim originated. The directors may, in their discretion, fix rates of interest on either notes or balances.

§ 9. Assessments.—If an association is not possessed of funds sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses, upon the members liable to assessment therefor, in proportion to their several liabilities.

§ 10. Investments.—The funds of each association shall be invested by the directors in the same classes of securities and in the same manner in which the funds of domestic life insurance companies are by law required or permitted to be invested.

§ 11. By-laws and regulations.—Each association shall have power to determine the premiums, contingent liabilities, assessments, penalties, and dividends of its members, and to enforce, or administer the same without the limitations imposed upon corporations without capital stock by section ninety of chapter 194 of the public acts of 1903. It shall also have power to make and amend by-laws or regulations not inconsistent with its certificate of incorporation for the prompt, economical, and safe conduct of its affairs. All by-laws and regulations of each association shall be filed with the insurance commissioner, and shall be subject to his approval. If not disapproved by him, they shall go into effect thirty days after filing, or at such later date as may be indicated in the by-laws or regulations.

§ 12. Appeals to superior court.—From any decision or order of the insurance commissioner affecting any association, such association shall have the right of appeal to the superior court for Hartford county.

GENERAL PROVISIONS

§ 13. Acts repealed.—All acts and parts of acts inconsistent with any provision of this act are hereby repealed to the extent of such inconsistency.

§ 14. [This section simply provided when the original act of 1913 became effective.]

§ 15. Publication of decisions.—The comptroller is authorized and directed to cause a digest of the decisions of the compensation commissioners to be compiled, and to have published twenty-five hundred copies thereof for distribution by him as follows: To the commissioners, seven hundred copies; to the state librarian, three hundred copies; and to the secretary of the state for sale by him at cost, fifteen hundred copies.

§ 16. **Appropriation.**—The sum of two thousand dollars, or so much thereof as may be necessary, is hereby appropriated for the purpose of defraying the expenses incurred in carrying out the provisions of [the preceding section.]

§ 17. **When effective.**—This act shall take effect from its passage.

WORKMEN'S COMPENSATION INSURANCE

(*H. B. No. 951, P. A. 1915, c. 287.*)

An Act concerning Workmen's Compensation Insurance.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

§ 1. **Terms of contract of insurance.**—Whenever any employer of labor as defined in chapter 138 of the public acts of 1913 and amendments thereto, shall insure his liability under said act as amended, with any company authorized to transact a compensation insurance business in this state, the contract of insurance between such employer of labor and such insurer shall be a contract for the benefit of any employee who shall sustain an injury arising out of and in the course of his employment by such insured by reason of the business operations described in the policy while conducted at any working place therein described or elsewhere in connection therewith, or in the event of such injury resulting in death, for the benefit of the dependents of such employee. Every such policy shall contain an agreement by the insurer to the effect that the insurer shall be directly and primarily liable to the employee and, in the event of his death, to his dependents, to pay to him or to them the compensation, if any, for which the employer is liable, provided payment in whole or in part of such compensation by either the employer or the insurer shall to the extent thereof be a bar to the recovery against the other of the amount so paid.

§ 2. **Notice to insurer when agreement for compensation is not made.**—When a claim for compensation by any such injured employee or the dependent of an injured employee of an employer who has insured his liability as aforesaid, shall not result in a voluntary agreement and a hearing before a compensation commissioner shall be necessary to determine such claim, the insurer shall receive the same notice of such hearing as is by law required to be given to the employer and shall thereupon be a party to the proceeding.

§ 3. **Award may be made against employer, insurer or both.**—In any such hearing the commissioner having jurisdiction may make his award directly against such employer, insurer, or both, and such award shall be enforceable in all respects as provided by law for enforcing awards against an employer, and the proceedings on hearing, finding, award, appeal, and execution shall be in all respects similar to that provided by law as between employer and employee.

§ 4. **Defenses on contract, certain abolished.**—As between any such injured employee or his dependent and the insurer, every such contract of insurance shall be conclusively presumed to cover the entire liability of the insured, and no question as to breach of warranty, coverage, or misrepresentation by the insured shall be raised by the insurer in any proceeding before the compensation commissioner or on appeal therefrom.

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§ 5. **Representations, when to avoid policy.**—No statement in an application for a policy of compensation insurance shall vitiate such policy as between the insurer and the insured, unless such statement shall be false and shall materially affect either the acceptance of the risk or the hazard assumed by the insurer.

§ 6. **Form of policy to be approved by insurance commissioner.**—No insurer shall issue any policy of insurance purporting to cover the liability of an employer under the provisions of chapter 138 of the public acts of 1913 and amendments thereto, until a copy of the form of such policy shall have been filed with and approved by the insurance commissioner.

§ 7. **Material misstatement, damages for.**—When any insured shall knowingly make a material misstatement to any insurer to the damage of such insurer, such insurer may recover just damages resulting from such misstatement.

§ 8. **“Employer,” “employee,” etc., defined.**—The terms “employer,” “employee,” “dependent,” and “commissioner” as used herein shall be construed as defined in chapter 138 of the public acts of 1913 as amended.

ILLINOIS

WORKMEN'S COMPENSATION ACT

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| <p>Section</p> <ol style="list-style-type: none"> 1. Election of employer—Notice—Withdrawal. 2. Employer presumed to have accepted—Notice of refusal. 3. Abolition of defenses—Extra-hazardous occupations. 4. Employer defined. 5. Employé defined. 6. Exclusive remedy. 7. Amount of death benefits. 8. Amount of disability compensation. <ol style="list-style-type: none"> (a) Medical, surgical and hospital expense. (b) Temporary total incapacity. (c) Disfigurement. (d) Partial incapacity. (e) Schedule. (f) Permanent total incapacity. (g) Deductions from death benefits. (h) Maximum—Incompetents. (i) When payable. 9. Commutation to lump sum. 10. Computation of earnings and compensation. 11. Measure of responsibility. 12. Medical examination. 13. Industrial Board—Members—Length of term. 14. Same—Salaries—Expenses—Assistants. 15. Same—To administer Act. 16. Duties — Summary procedure — Subpoenas—Record. 17. Blanks and forms—Records. 18. Settlement of questions. | <p>Section</p> <ol style="list-style-type: none"> 19. Settlement of controversies. <ol style="list-style-type: none"> (a) Arbitration. (b) Hearing and decision of arbitrator. (c) Medical examiner. (d) Aggravation by employé. (e) Review by Board. (f) Review by circuit court and Supreme Court. (g) Judgment. (h) Rehearing. (i) Filing of addresses with Board. 20. Annual report of Board. 21. Non-assignability and exemption of award—Insolvency of employer—Survivability. 22. Presumption of fraud in agreement. 23. Waiver—Approval. 24. Notice and claim—Requisites. 25. Payment to trustee—Annuity. 26. Method of securing payment—Effect of failure. 27. Existing contracts of insurance. 28. Insolvency of employer—Subrogation. 29. Third person liability—Subrogation—Damages. 30. Employer's report of accident. 31. Principal contractor. 32. Existing rights of action—In event of repeal. 33. Violation of Act a misdemeanor. 33½. Title. 34. Sections independent as to validity. 35. Repealing clause. |
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WORKMEN'S COMPENSATION ACT

(Hurd's Rev. St. 1915-16, p. 1272.)

An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment within this State; providing for the enforcement and administering thereof, and a penalty for its violation, and repealing an Act entitled, "An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912. [Approved June 28, 1913, in force July 1, 1913, with amendment in force July 1, 1915.]

§ 1. **Election of employer—Notice—Withdrawal.**—Be it enacted by the People of the State of Illinois, represented in the General Assembly: That any employer in this State may elect to provide and pay compensation for accidental injuries sustained by any employee arising out of and in the course of the employment according to the provisions of this Act and thereby relieve

himself from any liability for the recovery of damages, except as herein provided.

(a) Election by an employer to provide and pay compensation according to the provisions of this Act shall be made by the employer filing notice of such election with the Industrial Board.

(b) Every employer within the provisions of this Act who has elected to provide and pay compensation according to the provisions of this Act shall be bound thereby as to all his employees covered by this Act until January 1st of the next succeeding year and for terms of each year thereafter: Provided, any such employer may elect not to provide and pay the compensation herein provided for accidents resulting in either injury or death and occurring after the expiration of any such calendar year by filing notice of such election with the Industrial Board at least sixty days prior to the expiration of any such calendar year, and by posting such notice at a conspicuous place in the plant, shop, office, room, or place where such employee is employed, or by personal service, in written or printed form, upon such employee, at least sixty days prior to the expiration of any such calendar year.

(c) In the event any employer elects to provide and pay the compensation provided in this Act, then every employee of such employer, as a part of his contract of hiring or who may be employed at the time of the taking effect of this Act and the acceptance of its provisions by the employer, shall be deemed to have accepted all the provisions of this Act and shall be bound thereby unless within thirty days after such hiring or after the taking effect of this Act, and its acceptance by the employer, he shall file a notice to the contrary with the Industrial Board, whose duty it shall be to immediately notify the employer, and if so notified, the employer shall not be deprived of any common law or statutory defenses existing but for this Act; and until such notice to the contrary is given to the employer, the measure of liability of the employer shall be determined according to the compensation provisions of this Act: Provided, however, that any employee may withdraw from the operation of this Act upon filing a written notice of withdrawal at least ten days prior to January 1st of any year with the Industrial Board, whose duty it shall be to immediately notify the employer by registered mail, and, if so notified, the employer shall not be deprived of any common law or statutory defenses existing but for this Act, and until such notice to the contrary is given to the employer, the measure of liability of the employer shall be determined according to the compensation provisions of this Act.

(d) Any employer or employee may, without prejudice to any existing right or claim, withdraw his election to reject this Act by giving thirty days' written notice in such manner and form as may be provided by the Industrial Board.

§ 2. Employer presumed to have accepted—Notice of refusal.—Every employer enumerated in section 3, paragraph (b), shall be conclusively presumed to have filed notice of his election as provided in section 1, paragraph (a), and to have elected to provide and pay compensation according to the provisions of this Act, unless and until notice in writing of this election to the contrary is filed with the Industrial Board and unless and until the employer shall either furnish to his employee personally or post at a conspicuous place in the plant, shop, office, room or place where such employee is to be employed, a copy of said notice of election not to provide and pay compensation accord-

ing to the provisions of this Act; which notice of non-election if filed and posted as herein provided, shall be effective until withdrawn; and such notice of non-election may be withdrawn as provided in this Act.

§ 3. Abolition of defenses—Extra-hazardous occupations.—(a) In any action to recover damages against an employer, engaged in any of the occupations, enterprises or businesses enumerated in paragraph (b) of this section, who shall elect not to provide and pay compensation to any employee, according to the provisions of this Act, it shall not be a defense, that:

First—The employee assumed the risks of the employment;

Second—The injury or death was caused in whole or in part by the negligence of a fellow-servant; or

Third—The injury or death was proximately caused by the contributory negligence of the employee.

(b) The provisions of paragraph (a) of this section shall only apply to an employer engaged in any of the following occupations, enterprises or businesses, namely:

1. The building, maintaining, removing, repairing or demolishing of any structure, except as provided in sub-section 8 of this section;

2. Construction, excavating or electrical work, except as provided in subsection 8 of this section.

3. Carriage by land or water and loading or unloading in connection therewith;

4. The operation of any warehouse or general or terminal store houses;

5. Mining, surface mining or quarrying;

6. Any enterprise in which explosive materials are manufactured, handled or used in dangerous quantities;

7. In any enterprise wherein molten metal, or explosive or injurious gases or vapors, or inflammable vapors or fluids, or corrosive acids, are manufactured, used, generated, stored or conveyed in dangerous quantities;

8. In any enterprise in which statutory or municipal ordinance regulations are now or shall hereafter be imposed for the regulating, guarding, use or the placing of machinery or appliances, or for the protection and safeguarding of the employees or the public therein; each of which occupations, enterprises or businesses are hereby declared to be extra-hazardous: Provided, nothing contained herein shall be construed to apply to any work, employment, or operations done, had or conducted by farmers and others engaged in farming, tillage of the soil, or stock raising, or to those who rent, demise, or lease land for any of such purposes, or to any one in their employ or to any work done on a farm, or country place, no matter what kind of work or service is being done or rendered. [As amended by Act June 28, 1915; in force July 1, 1915.]

§ 4. Employer defined.—The term "employer" as used in this Act shall be construed to be:

First—The State and each county, city, town, township, incorporated village, school district, body politic, or municipal corporation therein.

Second—Every person, firm, public or private corporation, including hospitals, public service, eleemosynary, religious or charitable corporations or associations who has any person in service or under any contract for hire, express or implied, oral or written, and who, at or prior to the time of the accident to the employee for which compensation under this Act may be claimed, shall in the manner provided in this Act have elected to become subject to the

provisions of this Act, and who shall not, prior to such accident, have effected a withdrawal of such election in the manner provided in this Act.

§ 5. Employé defined.—The term "employee" as used in this Act shall be construed to mean:

First—Every person in the service of the State, county, city, town, township, incorporated village or school district, body politic, or municipal corporations therein, under appointment, or contract of hire, express or implied, oral or written, except any official of the State, or of any county, city, town, township, incorporated village, school district, body politic or municipal corporation therein; and except any employee thereof for whose accidental injury or death arising out of and in the course of his employment compensation or a pension shall be payable to him, his personal representative, beneficiaries or heirs, from any pension or benefit fund to which the State, or any county, city, town, township, incorporated village, school district, body politic or municipal corporation therein contributes in whole or in part: Provided, that one employed by a contractor who has contracted with the State, or a county, city, town, township, incorporated village, school district, body politic or municipal corporation therein, through its representatives, shall not be considered as an employee of the State, county, city, town, township, incorporated village, school district, body politic or municipal corporation which made the contract.

Second—Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and minors who are legally permitted to work under the laws of the State, who, for the purpose of this Act, shall be considered the same and have the same power to contract, receive payments and give quittances therefor, as adult employees, but not including any person whose employment is but casual or who is not engaged in the usual course of the trade, business, profession or occupation of his employer: Provided, that employees shall not be included within the provisions of this Act when excluded by the laws of the United States relating to liability of employers to their employees for personal injuries where such laws are held to be exclusive.

§ 6. Exclusive remedy.—No common law or statutory right to recover damages for injury or death sustained by any employee while engaged in the line of his duty as such employee other than the compensation herein provided shall be available to any employee who is covered by the provisions of this Act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury.

§ 7. Amount of death benefits.—The amount of compensation which shall be paid for an injury to the employee resulting in death shall be:

(a) If the employee leaves any widow, child or children whom he was under legal obligation to support at the time of his injury, a sum equal to four times the average annual earnings of the employee, but not less in any event than one thousand six hundred fifty dollars and not more in any event than three thousand five hundred dollars. Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amount payable on death.

(b) If no amount is payable under paragraph (a) of this section and the employee leaves any widow, child, parent, grandparent or other lineal heir, to whose support he had contributed within four years previous to the time of

his injury, a sum equal to four times the average annual earnings of the employee, but not less in any event than one thousand six hundred fifty dollars and not more in any event than three thousand five hundred dollars. Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amount payable on death.

(c) If no amount is payable under paragraph (a) or (b) of this section and the employee leaves collateral heirs dependent at the time of the injury to the employee upon his earnings, such a percentage of the sum provided in paragraph (a) of this section as the average annual contributions which the deceased made to the support of such collateral dependent heirs during the two years preceding the injury bears to his average annual earnings during such two years.

(d) If no amount is payable under paragraph (a) or (b) or (c) of this section, a sum not to exceed one hundred and fifty dollars for burial expenses.

(e) All compensation except burial expenses, provided for in this section to be paid in case injury results in death, shall be paid in installments equal to one-half of the average earnings, at the same intervals at which the wages or earnings of the employee were paid; or if this shall not be feasible, then the installments shall be paid weekly: Provided, such compensation may be paid in a lump sum upon petition as provided in section 9 of this Act.

(f) The compensation to be paid for injury which results in death, as provided in this section, shall be paid at the option of the employer either to the personal representative of the deceased employee or to his beneficiaries, and shall be distributed to the heirs who formed the basis for determining the amount of compensation to be paid by the employer, the distributees' share to be in the proportion of their respective dependency at the time of the injury on the earnings of the deceased: Provided, that, in the judgment of the court appointing the personal representative, a child's distributive share may be paid to the parent for the support of the child. The payment of compensation by the employer to the personal representative of the deceased employee shall relieve him of all obligations as to the distribution of such compensation so paid. The distribution by the personal representative of the compensation paid to him by the employer shall be made pursuant to the order of the court appointing him. [As amended by Act June 28, 1915; in force July 1, 1915.]

§ 8. Amount of disability compensation.—The amount of compensation which shall be paid to the employee for an injury not resulting in death shall be:

(a) Medical, surgical and hospital expense.—The employer shall provide necessary first aid, medical, surgical and hospital services; also medical, surgical and hospital services for a period not longer than eight weeks, not to exceed, however, the amount of \$200.00. The employee may elect to secure his own physician, surgeon or hospital services at his own expense.

(b) Temporary total incapacity.—If the period of temporary total incapacity for work lasts for more than six working days, compensation equal to one-half the earnings, but not less than \$6.00 nor more than \$12.00 per week, beginning on the eighth day of such temporary total incapacity, and continuing as long as the temporary total incapacity lasts, but not after the amount of compensation paid equals the amount which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving as provided in said paragraph (a), section 7.

(c) Disfigurement.—For any serious and permanent disfigurement to the hand, head or face, the employee shall be entitled to compensation for such disfigurement, the amount fixed by agreement or by arbitration in accordance with the provisions of this Act, which amount shall not exceed one-quarter of the amount of the compensation which would have been payable as a death benefit under paragraph (a) section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving, as provided in said paragraph (a), section 7: Provided, that no compensation shall be payable under this paragraph where compensation is payable under paragraph (d), (e) or (f) of this section: And, provided, further, that when the disfigurement is to the hand, head or face as a result of any injury, for which injury compensation is not payable under paragraph (d), (e) or (f) of this section, compensation for such disfigurement may be had under this paragraph.

(d) Partial incapacity.—If, after the injury has been sustained, the employee as a result thereof becomes partially incapacitated from pursuing his usual and customary line of employment, he shall, except in the cases covered by the specific schedule set forth in paragraph (e) of this section, receive compensation, subject to the limitations as to time and maximum amounts fixed in paragraphs (b) and (h) of this section, equal to one-half of the difference between the average amount which he earned before the accident, and the average amount which he is earning or is able to earn in some suitable employment or business after the accident. In the event the employee returns to the employment of the employer in whose service he was injured, the employee shall not be barred from asserting a claim for compensation under this Act: Provided, notice of such claim is filed with the Industrial Board within eighteen months after he returns to such employment, and the said board shall immediately send to the employer, by registered mail, a copy of such notice.

(e) Schedule.—For injuries in the following schedule, the employee shall receive in addition to compensation during the period of temporary total incapacity for work resulting from such injury, in accordance with the provisions of paragraphs (a) and (b) of this section, compensation, for a further period, subject to the limitations as to time and amounts fixed in paragraphs (b) and (h) of this section, for the specific loss herein mentioned, as follows, but shall not receive any compensation under any other provision of this Act:

For the loss of a thumb, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during sixty weeks;

For the loss of a first finger, commonly called the index finger, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during thirty-five weeks;

For the loss of a second finger, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during thirty weeks;

For the loss of a third finger, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during twenty weeks;

For the loss of a fourth finger, commonly called the little finger, or the permanent and complete loss of its use, fifty per centum of the weekly wage during fifteen weeks;

The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of one-half of such thumb or finger, and compensation shall be one-half the amounts above specified;

The loss of more than one phalange shall be considered as the loss of the

entire finger or thumb: Provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand;

For the loss of a great toe, fifty per centum of the average weekly wage during thirty weeks;

For the loss of one toe other than the great toe, fifty per centum of the average weekly wage during ten weeks, and for the additional loss of one or more toes other than the great toe, fifty per centum of the average weekly wage during an additional ten weeks;

The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during one hundred and fifty weeks;

For the loss of an arm, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during two hundred weeks;

For the loss of a foot, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during one hundred and twenty-five weeks;

For the loss of a leg, or the permanent and complete loss of its use, fifty per centum of the average weekly wage during one hundred and seventy-five weeks;

For the loss of the sight of an eye, fifty per centum of the average weekly wage during one hundred weeks;

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability, to be compensated according to the compensation fixed by paragraph (f) of this section: Provided, that these specific cases of total and permanent disability shall not be construed as excluding other cases.

(f) Permanent total incapacity.—In case of complete disability, which renders the employee wholly and permanently incapable of work, compensation equal to 50 per cent of his earnings, but not less than \$6.00 nor more than \$12.00 per week, commencing on the day after the injury and continuing until the amount paid equals the amount which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving, as provided in said paragraph (a), section 7, and thereafter a pension during life annually equal to 8 per cent of the amount which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving, as provided in said paragraph (a), section 7. Such pension shall not be less than \$10.00 per month and shall be payable monthly.

(g) Deductions from death benefits.—In case death occurs as a result of the injury before the total of the payments made equals the amount payable as a death benefit, then in case the employee leaves any widow, child or children, parents, grandparents or other lineal heirs, entitled to compensation under section 7, the difference between the compensation for death and the sum of the payments made to the employee shall be paid, at the option of the em-

ployer, either to the personal representative or to the beneficiaries of the deceased employee, and distributed, as provided in paragraph (f) of section 7, but in no case shall the amount payable under this paragraph be less than \$500.00.

(h) Maximum—Incompetents.—In no event shall the compensation to be paid exceed fifty per centum of the average weekly wage or exceed \$12.00 per week in amount; nor, except in cases of complete disability, as defined above, shall any payments extend over a period of more than eight years from the date of the accident. In case an injured employee shall be incompetent at the time when any right or privilege accrues to him under the provisions of this Act, a conservator or guardian may be appointed, pursuant to law, and may, on behalf of such incompetent, claim and exercise any such right or privilege with the same force and effect as if the employee himself had been competent and had claimed or exercised said right or privilege; and no limitations of time by this Act provided shall run so long as said incompetent employee is without a conservator or guardian.

(i) When payable.—All compensations provided for in paragraphs (b), (c), (d), (e) and (f) of this section, other than cases of pension for life, shall be paid in installments at the same intervals at which the wages or earnings of the employee were paid at the time of the injury, or if this shall not be feasible, then the installments shall be paid weekly. [As amended by Acts 1915.]

§ 9. Commutation to lump sum.—Any employer or employee or beneficiary who shall desire to have such compensation, or any unpaid part thereof, paid in a lump sum, may petition the Industrial Board, asking that such compensation be so paid, and if, upon proper notice to the interested parties and a proper showing made before such board, it appears to the interests of the parties that such compensation be so paid, the board may order the commutation of the compensation to an equivalent lump sum, which commutation shall be an amount which will equal the total sum of the probable future payments capitalized at their present value upon the basis of interest calculated at three per centum per annum with annual rests: Provided, that in cases indicating complete disability no petition for a commutation to a lump sum basis shall be entertained by the Industrial Board until after the expiration of six months from the date of the injury, and where necessary, upon proper application being made, a guardian, conservator or administrator, as the case may be, may be appointed for any person under disability who may be entitled to any such compensation, and an employer bound by the terms of this Act, and liable to pay such compensation, may petition for the appointment of the public administrator, or a conservator, or guardian, where no legal representative has been appointed or is acting for such party or parties so under disability. Either party may reject an award of a lump sum payment of compensation, except an award for compensation under section 7 or paragraph (e) of section 8 or for the injuries defined in the last paragraph of paragraph (e) of section 8 as constituting total and permanent disability, by filing his written rejection thereof with the said board within ten days after notice to him of the award, in which event compensation shall be payable in installments as herein provided. [As amended by Act June 28, 1915; in force July 1, 1915.]

§ 10. Computation of earnings and compensation.—The basis for computing the compensation provided for in sections 7 and 8 of the Act shall be as follows:

(a) The compensation shall be computed on the basis of the annual earnings which the injured person received as salary, wages, or earnings if in the employment of the same employer continuously during the year next preceding the injury.

(b) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the employee was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

(c) If the injured person has not been engaged in the employment of the same employer for the full year immediately preceding the accident, the compensation shall be computed according to the annual earnings which persons of the same class in the same employment and same location, (or if that be impracticable, of neighboring employments of the same kind) have earned during such period.

(d) As to employees in employments in which it is the custom to operate throughout the working days of the year, the annual earnings, if not otherwise determinable, shall be regarded as 300 times the average daily earnings in such computation.

(e) As to employees in employments in which it is the custom to operate for a part of the whole number of working days in each year, such number, if the annual earnings are not otherwise determinable shall be used instead of 300 as a basis for computing the annual earnings: Provided, the minimum number of days which shall be so used for the basis of the year's work shall not be less than 200.

(f) In the case of injured employees who earn either no wage or less than the earnings of adult day laborers in the same line of employment in that locality, the yearly wage shall be reckoned according to the average annual earning of adults of the same class in the same (or if that is impracticable then of neighboring) employments.

(g) Earnings, for the purpose of this section, shall be based on the earnings for the number of hours commonly regarded as a day's work for that employment, and shall exclude overtime earnings. The earnings shall not include any sum which the employer has been accustomed to pay the employee to cover any special expense entailed on him by the nature of his employment.

(h) In computing the compensation to be paid to any employee, who, before the accident for which he claims compensation, was disabled and drawing compensation under the terms of this Act, the compensation for each subsequent injury shall be apportioned according to the proportion of incapacity and disability caused by the respective injuries which he may have suffered.

(i) To determine the amount of compensation for each installment period, the amount per annum shall be ascertained pursuant hereto, and such amount divided by the number of installment periods per annum.

§ 11. Measure of responsibility.—The compensation herein provided, together with the provisions of this Act, shall be the measure of the responsibility which the employer has assumed for injuries or death that may occur to employees in his employment subject to the provisions of this Act.

§ 12. Medical examination.—An employee entitled to receive disability payments shall be required, if requested by the employer, to submit himself, at the expense of the employer, for examination to a duly qualified medical practitioner or surgeon selected by the employer, at a time and place reasonably

convenient for the employee as soon as practicable after the injury, and also one week after the first examination and thereafter at intervals not oftener than once every four weeks, which examination shall be for the purpose of determining the nature, extent and probable duration of the injury received by the employee, and for the purpose of ascertaining the amount of compensation which may be due the employee from time to time for disability according to the provisions of this Act: Provided, however, that such examination shall be made in the presence of a duly qualified medical practitioner or surgeon provided and paid for by the employee, if such employee so desires. In all cases where the examination is made by a surgeon engaged by the employer and the injured employee has no surgeon present at such examination, it shall be the duty of the surgeon making the examination at the instance of the employer to deliver to the injured employee, upon his request or that of his representative, a statement in writing of the condition and extent of the injury to the same extent that said surgeon reports to the employer. If the employee refuses so to submit himself to examination or unnecessarily obstructs the same, his right to compensation payment shall be temporarily suspended until such examination shall have taken place, and no compensation shall be payable under this Act for such period. It shall be the duty of surgeons treating an injured employee who is likely to die and treating him at the instance of the employer to have called in another surgeon, to be designated and paid for by either the injured employee or by the person or persons who would become his beneficiary or beneficiaries, to make an examination before the death of such injured employee. [As amended by Act June 28, 1915; in force July 1, 1915.]

§ 13. Industrial Board—Members—Length of term.—There is hereby created a board which shall be known as the Industrial Board, to consist of three members to be appointed by the Governor, by and with the consent of the Senate, one of whom shall be a representative citizen of the employing class operating under this Act, and one of whom shall be a representative citizen chosen from among the employees operating under this Act, and one of whom shall be a representative citizen not identified with either the employing or employee classes, and who shall be designated by the Governor as chairman. Appointment of members to places on the first board, or to fill vacancies on said board may be made during recesses of the Senate, but shall be subject to confirmation by the Senate at the next ensuing session of the Legislature. The term of office of members of this board shall be six years, expiring on January 31 of the odd years, except that when first constituted one member shall be appointed for two years, one for four years, and one for six years. Thereafter one member shall be appointed every second year for the full term of six years. Not more than two members of the board shall belong to the same political party. [As amended by Act June 28, 1915; in force July 1, 1915.]

§ 14. Same—Salaries—Expenses—Assistants.—The salary of each of the members of the board so appointed by the Governor shall be five thousand dollars (\$5,000.00) per year. The board shall appoint a secretary and shall employ such assistants and clerical help as may be necessary. The salary of the arbitrators designated by the board shall be at the rate of eighteen hundred dollars (\$1,800.00) per year. The members of the board and the arbitrators shall have reimbursed to them their actual traveling expenses and disbursements made or incurred by them in the discharge of their official duties while

away from their places of residence in the performance of their duties. The board shall provide itself with a seal for the authentication of its orders, awards, and proceedings, upon which shall be inscribed the words, "Industrial Board—Illinois—Seal." [As amended by Act June 28, 1915; in force July 1, 1915.]

§ 15. **Same—To administer Act.**—The Industrial Board shall have jurisdiction over the operation and administration of this Act, and said board shall perform all the duties imposed upon it by this Act, and such further duties as may hereafter be imposed by law and the rules of the board not inconsistent therewith.

§ 16. **Duties—Summary procedure—Subpœnas—Record.**—The board may make rules and orders for carrying out the duties imposed upon it by law, which rules and orders shall be deemed prima facie reasonable and valid; and the process and procedure before the board shall be as simple and summary as reasonably may be. The board, or any member thereof, or any arbitrator designated by said board shall have the power to administer oaths, subpœna and examine witnesses, to issue subpœnas duces tecum requiring the production of such books, papers, records and documents as may be evidence of any matter under inquiry, and to examine and inspect the same and such places or premises as may relate to the question in dispute. Said board, or any member thereof, or any arbitrator designated by said board, shall, on written request of either party to the dispute, issue subpœnas for the attendance of such witnesses and production of such books, papers, records, and documents as shall be designated in said applications, providing, however, that the parties applying for such subpœna shall advance the officer and witness fees provided for in suits pending in the circuit court. Service of such subpœnas shall be made by any sheriff or constable or other person. In case any person refuses to comply with an order of the board or subpœna issued by it or any member thereof, or any arbitrator designated by said board, or to permit an inspection of places or premises, or to produce any books, papers, records, or documents, or any witness refuses to testify to any matter regarding which he may be lawfully interrogated, the County Court of the county in which said hearing or matter is pending, on application of any member of the board or any arbitrator designated by the board, shall compel obedience by attachment proceedings, as for contempt, as in a case of disobedience of the requirements of a subpœna from such court on a refusal to testify therein.

The board at its expense shall provide a stenographer to take the testimony and record of proceedings at the hearings before an arbitrator, committee of arbitration, or the board, and said stenographer shall furnish a transcript of such testimony or proceedings to any person requesting it upon payment to him therefor of five cents per one hundred words for the original and three cents per one hundred words for each copy of such transcript.

The board shall have the power to determine the reasonableness and fix the amount of any fee or compensation charged by any person for any service performed in connection with this Act, or for which payment is to be made under this Act or rendered in securing any right under this Act. [As amended by Act June 28, 1915; in force July 1, 1915.]

§ 17. **Blanks and forms—Records.**—The board shall cause to be printed and furnish free of charge upon request by any employer or employee such blank forms as it shall deem requisite to facilitate or promote the efficient ad-

ministration of this Act, and the performance of the duties of the board; it shall provide a proper record in which shall be entered and indexed the name of any employer who shall file a notice of declination or withdrawal under this Act, and the date of the filing thereof; and a proper record in which shall be entered and indexed the name of any employee who shall file such a notice of declination or withdrawal, and the date of the filing thereof; and such other notices as may be required by the terms and intentment of this Act; and records in which shall be recorded all proceedings, orders and awards had or made by the board, or by the arbitration committees, and such other books or records as it shall deem necessary, all such records to be kept in the office of the board.

§ 18. Settlement of questions.—All questions arising under this Act, if not settled by agreement of the parties interested therein, shall, except as otherwise provided, be determined by the Industrial Board.

§ 19. Settlement of controversies.—Any disputed questions of law or fact upon which the employer and employee or personal representative cannot agree, shall be determined as herein provided.

(a) Arbitration.—It shall be the duty of the Industrial Board, upon notification that the parties have failed to reach an agreement, to designate an arbitrator; Provided, that if the compensation claimed is for a partial permanent or total permanent incapacity or for death, then the dispute may, at the election of either party, be determined by a committee of arbitration, which election for a determination by a committee shall be made by petitioner filing with the board his election in writing with his petition or by the other party filing with the board his election in writing within five days of notice to him of the filing of the petition, and thereupon it shall be the duty of the Industrial Board, upon either of the parties having filed their election for a committee of arbitration as above provided, to notify both parties to appoint their respective representatives on the committee of arbitration. The board shall designate an arbitrator to act as chairman, and if either party fails to appoint its member on the committee within seven days after notification as above provided, the board shall appoint a person to fill the vacancy and notify the parties to that effect. The party filing his election for a committee of arbitration shall with his election deposit with the board the sum of twenty dollars, to be paid by the board to the arbitrators selected by the parties as compensation for their services as arbitrators, and upon a failure to deposit as aforesaid, the election shall be void and the determination shall be by an arbitrator designated by the board. The members of the committee of arbitration appointed by either of the parties or one appointed by the board to fill a vacancy by reason of the failure of one of the parties to appoint, shall not be a member of the board or an employee thereof.

(b) Hearing and decision of arbitrator.—The arbitrator or committee of arbitration shall make such inquiries and investigations as he or they shall deem necessary, and may examine and inspect all books, papers, records, places, or premises relating to the questions in dispute, and hear such proper evidence as the parties may submit. The hearings before the arbitrator or committee of arbitration shall be held in the vicinity where the injury occurred, after ten days' notice of the time and place of such hearing shall have been given to each of the parties or their attorneys of record. The decision of the arbitrator or committee of arbitration shall be filed with the Industrial

Board, which board shall immediately send to each party or his attorney a copy of such decision, together with a notification of the time when it was filed, and unless a petition for a review is filed by either party within fifteen days after the receipt by said party of the copy of said decision and notification of time when filed, and unless such party petitioning for a review shall within twenty days after the receipt by him of the copy of said decision, file with the board either an agreed statement of the facts appearing upon the hearing before the arbitrator or committee of arbitration, or if such party shall so elect, a correct stenographic report of the proceedings at such hearings, then the decision shall become the decision of the Industrial Board: Provided, that such Industrial Board may for sufficient cause shown grant further time, not exceeding thirty days, in which to petition for such review or to file such agreed statement or stenographic report. Such agreed statement of facts or correct stenographic report, as the case may be, shall be authenticated by the signatures of the parties or their attorneys and in the event they do not agree as to the correctness of the stenographic report it shall be authenticated by the signature of the arbitrator designated by the board.

(c) Medical examiner.—The Industrial Board may appoint, at its expense, a duly qualified, impartial physician to examine the injured employee and report to the board. The fee for this service shall not exceed five dollars and traveling expenses, but the board may allow additional reasonable amounts in extraordinary cases. The fees and the payment thereof of all attorneys and physicians for services authorized by the board under this Act, shall, upon request of either the employer or the employee or the beneficiary affected, be subject to the review and decision of the Industrial Board.

(d) Aggravation by employé.—If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery or shall refuse to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, the board may, in its discretion, reduce or suspend the compensation of any such injured employee.

(e) Review by Board.—If a petition for review and agreed statement of facts or stenographic report is filed, as provided herein, the Industrial Board shall promptly review the decision of the arbitrator or committee of arbitration and all questions of law or fact which appear from the said statement of facts or stenographic report, and such additional evidence as the parties may submit. After such hearing upon review, the board shall file in its office its decision thereon, and shall immediately send to each party or his attorney a copy of such decision and a notification of the time when it was filed. Such review and hearing may be held in its office, or elsewhere, as the board may deem advisable: Provided, the board shall give ten days' notice of the time and place thereof to the parties or their attorneys. In any case the board in its decision may in its discretion find specially upon any question or questions of law or fact which shall be submitted in writing by either party, whether ultimate or otherwise. Any party may, within twenty days after the receipt of notice of the board's decision, or within such further time, not exceeding thirty days, as the board may grant, file with the board either an agreed statement of the facts appearing upon the hearing, or, if such party shall so elect, a correct stenographic report of the additional proceedings presented before the board, in which report the party may embody a correct statement of such other proceedings in the case as such party may desire to have reviewed, such statement of facts or stenographic report to be authenticated by the signatures

of the parties or their attorneys, and in the event that they do not agree, then the authentication of such stenographic report shall be by the signature of the chairman of the board. The applications for adjustment of claim and other documents in the nature of pleadings filed by either party, together with the decisions of the arbitrator and of the Industrial Board, and the statement of facts or stenographic reports hereinbefore provided for in paragraphs (b) and (c) shall be the record of the proceedings of said board, and shall be subject to review as hereinafter provided.

(f) Review by circuit court and Supreme Court.—The decision of the Industrial Board, acting within its powers, according to the provisions of paragraph (e) of this section, and of the arbitrator or committee of arbitration, where no review is had and his or their decision becomes the decision of the Industrial Board in accordance with the provisions of this section, shall, in the absence of fraud, be conclusive unless reviewed as in this paragraph hereinafter provided.

(1) The Circuit Court of the county where any of the parties defendant may be found shall by writ of certiorari to the Industrial Board have power to review all questions of law presented by such record. Such writ shall be issued by the clerk of such court upon præcipe. Service upon any member of the Industrial Board or the secretary thereof shall be service on the board, and service upon other parties in interest shall be by scire facias, or service may be made upon said board and other parties in interest by mailing notice of the commencement of the proceedings and the return day of the writ to the office of said board and the last known place of residence of the other parties in interest at least ten days before the return day of said writ; or (2) any party in interest may commence a suit in chancery in the Circuit Court of the county where any of the parties defendant may be found to review the decision of the board only for errors of law appearing on the said record of the said board. Such suit by writ of certiorari or in chancery shall be commenced within twenty days of the receipt of notice of the decision of the board.

The court may confirm or set aside the decision of the arbitrator or committee of arbitration or Industrial Board. If the decision is set aside and the facts found in the proceedings before the board are sufficient, the court may enter such decision as is justified by law, or may remand the cause to the Industrial Board for further proceedings, and may state the questions requiring further hearing, and give such other instructions as may be proper.

Judgments, orders and decrees of the Circuit Court under this Act shall be reviewed only by the Supreme Court upon writ of error. Upon motion, the trial court shall enter of record a certificate that the cause is, or is not, in his opinion, one proper to be reviewed by the Supreme Court. Upon filing with the clerk of the Supreme Court a certified copy of such a certificate that the cause is one proper to be reviewed, writ of error shall issue. If the trial court certifies that the cause is not one proper to be reviewed, the Supreme Court, in its discretion, may, nevertheless, order that a writ of error issue. A writ of error, when issued, shall operate as a supersedeas.

The decision of any two members of a committee of arbitration or of the Industrial Board shall be considered the decision of such committee or board, respectively.

(g) Judgment.—Either party may present a certified copy of the decision of the Industrial Board, when no proceedings for review thereof have been taken, or of the decision of such arbitrator or committee of arbitration when

no claim for review is made, or of the decision of the Industrial Board after hearing upon review, providing for the payment of compensation according to this Act, to the Circuit Court of the county in which such accident occurred or either of the parties are residents, whereupon such court shall render a judgment in accordance therewith; and in case where the employer does not institute proceedings for review of the decision of the Industrial Board and refuses to pay compensation according to the award upon which such judgment is entered, the court shall, in entering judgment thereon, tax as costs against him the reasonable costs and attorney fees in the arbitration proceedings and in the court entering the judgment, for the person in whose favor the judgment is entered, which judgment and costs, taxed as herein provided shall, until and unless set aside, have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with like effect, be entered and docketed. The Circuit Court shall have power, at any time, upon application, to make any such judgment conform to any modification required by any subsequent decision of the Supreme Court upon appeal, or as the result of any subsequent proceedings for review, as provided in this Act.

Judgment shall not be entered until fifteen days' notice of the time and place of the application for the entry of judgment shall be served upon the employer by filing such notice with the Industrial Board; which board shall, in case it has on file the address of the employer or the name and address of its agent, upon whom notices may be served, immediately send a copy of the notice to the employer or such designated agent; and no judgment shall be entered in the event the employer shall file with the said board its bond, with good and sufficient surety in double the amount of the award, conditioned upon the payment of said award in the event the said employer shall fail to prosecute with effect proceedings for review of the decision, or the said decision, upon review, shall be affirmed.

(h) Rehearing.—An agreement or award under this Act, providing for compensation in installments, may at any time within eighteen months after such agreement or award be reviewed by the Industrial Board at the request of either the employer or the employee, on the ground that the disability of the employee has subsequently recurred, increased, diminished or ended; and on such review, compensation payments may be re-established, increased, diminished or ended: Provided, that the board shall give fifteen days' notice to the parties of the hearing for review: And provided, further, any employee, upon any petition for such a review being filed by the employer, shall be entitled to one day's notice for each one hundred miles necessary to be traveled by him in attending the hearings of the board upon said petition and three days in addition thereto, and such employee, shall, at the discretion of the board, also be entitled to five cents per mile necessarily traveled by him in attending such hearing, not to exceed a distance of 300 miles, to be taxed by the board as costs and deposited with the petition of the employer.

(i) Filing of addresses with Board.—Each party, upon taking any proceedings or steps whatsoever before any arbitrator, committee of arbitration, industrial board or court, shall file with the Industrial Board his address, or the name and address of an agent upon whom all notices to be given to such party shall be served, either personally or by registered mail addressed to such party or agent at the last address so filed with the Industrial Board: Provided, that in the event such party has not filed his address, or the name

and address of an agent, as above provided, service of any notice may be had by filing such notice with the Industrial Board. [As amended Act June 28, 1915; in force July 1, 1915.]

§ 20. Annual report of Board.—The Industrial Board shall report in writing to the Governor on the 30th day of June, annually, the details and results of its administration of this Act, in accordance with the terms of this Act, and may prepare and issue such special bulletins and reports from time to time as in the opinion of the board, seems advisable.

§ 21. Non-assignability and exemption of award—Insolvency of employer—Survivability.—No payment, claim, award or decision under this Act shall be assignable or subject to any lien, attachment or garnishment or be held liable in any way for any lien, debt, penalty or damages. In case of insolvency of the employer, every decision of the Industrial Board for compensation under this Act shall, upon the filing of a certified copy of the decision with the recorder of deeds of the county, constitute a lien upon all property of the employer within said county, paramount to all other claims or liens, except for wages and taxes, and mortgages or trust deeds, and such liens shall be enforced by order of the court. Any right to receive compensation hereunder shall be extinguished by the death of the person or persons entitled thereto, subject to the provisions of this Act relative to compensation for death received in the course of employment: Provided, that upon the death of a beneficiary, who is receiving compensation provided for in section 7, leaving surviving a parent, sister or brother of the deceased employee, at a time of his death dependent upon him for support, who were receiving from such beneficiary a contribution to support, then that proportion of the compensation of the beneficiary which would have been paid but for the death of the beneficiary, but in no event exceeding said unpaid compensation, which the contribution of the beneficiary to the dependent's support within one year prior to the death of the beneficiary bears to the compensation of the beneficiary within that year, shall be continued for the benefit of such dependents, notwithstanding the death of the beneficiary. [As amended by Act June 28, 1915; in force July 1, 1915.]

§ 22. Presumption of fraud in agreement.—Any contract or agreement made by any employer or his agent or attorney with any employee or any other beneficiary of any claim under the provisions of this Act within seven days after the injury shall be presumed to be fraudulent.

§ 23. Waiver—Approval.—No employee, personal representative, or beneficiary shall have power to waive any of the provisions of this Act in regard to the amount of compensation which may be payable to such employee, personal representative or beneficiary hereunder except after approval by the Industrial Board.

§ 24. Notice and claim—Requisites.—No proceedings for compensation under this Act shall be maintained unless notice of the accident has been given the employer as soon as practicable, but not later than 30 days after the accident. In cases of mental incapacity of the employee, notice must be given within six months after such accident. No defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings by arbitration or otherwise by the employee, unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy. Notice of the accident shall in substance apprise the employer of the claim of compensa-

tion made and shall state the name and address of the employee injured, the approximate date and place of the accident, if known, and in simple language the cause thereof; which notice may be served personally or by registered mail, addressed to the employer at his last known residence or place of business: Provided, that the failure on the part of any person entitled to such compensation to give such notice shall not relieve the employer from his liability for such compensation, when the facts and circumstances of such accident are known to such employer, his agent or vice principal in the enterprise. No proceedings for compensation under this Act shall be maintained unless claim for compensation has been made within six months after the accident, or in the event that payments have been made under the provisions of this Act, unless written claim for compensation has been made within six months after such payments have ceased.

§ 25. Payment to trustee—Annuity.—Any employer against whom liability may exist for compensation under this Act, may, with the approval of the Industrial Board, be relieved therefrom by:

(a) Depositing the commuted value of the total unpaid compensation for which such liability exists, computed at three per centum per annum in the same manner as provided in section 9, with the State Treasurer, or county treasurer in the county where the accident happened, or with any State or National bank or trust company doing business in this State, or in some other suitable depository approved by the Industrial Board: Provided, that any such depository to which such compensation may be paid shall pay the same out in installments as in this Act provided, unless such sum is ordered paid in, and is commuted to, a lump sum payment in accordance with the provisions of this Act.

(b) By the purchase of an annuity, in an amount of compensation due or computed, under this Act within the limitation provided by law, in any insurance company granting annuities and licensed or permitted to do business in this State, which may be designated by the employer, or the Industrial Board.

§ 26. Method of securing payment—Effect of failure.—(a) An employer who elects to provide and pay the compensation provided for in this Act, shall, within ten (10) days of receipt by the employer of a written demand by the Industrial Board, (1) file with the board a sworn statement showing his financial ability to pay the compensation provided for in this Act, normally required to be paid, or (2) furnish security, indemnity or a bond guaranteeing the payment by the employer of the compensation provided for in this Act, normally required to be paid, or (3) insure to a reasonable amount his normal liability to pay such compensation in some corporation, association or organization authorized, licensed or permitted to do such insurance business in this State, or (4) make some other provisions for the securing of the payment of compensation provided for in this Act, normally required to be paid, and shall, within twenty (20) days of the receipt of such written demand, furnish to the board evidence of his compliance with one of the above alternatives: Provided, that the sworn statement of financial ability, or security, indemnity or bond, or amount of insurance or other provision, filed, furnished, carried or made by the employer, as the case may be, shall be subject to the approval of the board, upon the approval of which the board shall send to the employer written notice of its approval thereof: And pro-

vided, further, that demand shall not be made upon the employer by the board oftener than once in any calendar year.

(b) If no sworn statement or no security, indemnity or bond, or no insurance, is filed, furnished or carried, or other provisions made by the employer within ten (10) days of receipt by the employer of the written demand provided for in paragraph (a), or if the statement, security, indemnity, bond or amount of insurance filed, furnished or carried, or other provision made by the employer, as provided in paragraph (a), shall not be approved by the board, and written notice of such non-approval shall be given to the employer and the employer shall not comply with one of the alternatives of paragraph (a) of this section within ten (10) days after the receipt by the employer of such written notice of non-approval, then the employer shall be liable for compensation to any injured employee, or his personal representative, according to the terms of this Act, or for damages in the same manner as if the employer had elected not to accept this Act, at

or his personal representative: Provided such option is exercised and written notice thereof is given to the employer within thirty (30) days after the accident to such employee; otherwise the employer shall be liable only for the compensation payable according to the provisions of this Act: And provided, further, that if at any time thereafter the employer shall comply with any of the alternatives of paragraph (a), then as to all accidents occurring after the said compliance, the employer shall only be liable for compensation according to the terms of this Act: And provided, further, that, upon the failure of any employer to comply with the provisions of this section, the Industrial Board may, for the purpose of furnishing notice to the employees of such employer, publish the fact of such failure by such employer in any newspaper having a general circulation in the county where such employer does business. [As amended by Act June 28, 1915; in force July 1, 1915.]

§ 27. Existing contracts of insurance.—(a) This Act shall not affect or disturb the continuance of any existing insurance, mutual aid, benefit, or relief association or department, whether maintained in whole or in part by the employer or whether maintained by the employees, the payment of benefits of such association or department being guaranteed by the employer or by some person, firm or corporation for him: Provided, the employer contributes to such association or department an amount not less than the full compensation herein provided, exclusive of the cost of the maintenance of such association or department and without any expense to the employee. This Act shall not prevent the organization and maintaining under the insurance laws of this State of any benefit or insurance company for the purpose of insuring against the compensation provided for in this Act, the expense of which is maintained by the employer. This Act shall not prevent the organization or maintaining under the insurance laws of this State of any voluntary mutual aid, benefit or relief association among employees for the payment of additional accident or sick benefits.

(b) No existing insurance, mutual aid, benefit or relief association or department shall, by reason of anything herein contained be authorized to discontinue its operation without first discharging its obligations to any and all persons carrying insurance in the same or entitled to relief or benefits therein.

(c) Any contract, oral, written or implied, of employment providing for relief benefit, or insurance or any other device whereby the employee is re-

quired to pay any premium or premiums for insurance against the compensation provided for in this Act shall be null and void, and any employer withholding from the wages of any employee any amount for the purpose of paying any such premium shall be guilty of a misdemeanor and punishable by a fine of not less than ten dollars nor more than one thousand dollars, or imprisonment in the county jail for not more than six months, or both, in the discretion of the court.

§ 28. Insolvency of employer—Subrogation.—Any person, who shall become entitled to compensation under the provisions of this Act, shall, in the event of his inability to recover such compensation from the employer on account of his insolvency, be subrogated to all the rights of such employer against any insurance company, association or insurer which may have insured such employer against loss growing out of the compensation required by the provisions of this Act to be paid by such employer, and, in such event only, the said insurance company, association, or insurer shall become primarily liable to pay to the employee or his personal representative the compensation required by the provisions of this Act to be paid by such employer.

§ 29. Third person liability—Subrogation—Damages.—Where an injury or death for which compensation is payable by the employer under this Act was not proximately caused by the negligence of the employer or his employees, and was caused under circumstances creating a legal liability for damages in some person other than the employer to pay damages, such other person having also elected to be bound by this Act, then the right of the employee or personal representative to recover against such other person shall be subrogated to his employer and such employer may bring legal proceedings against such other person to recover the damages sustained, in an amount not exceeding the aggregate amount of compensation payable under this Act, by reason of the injury or death of such employee. Where the injury or death for which compensation is payable under this Act was not proximately caused by the negligence of the employer or his employees and was caused under circumstances creating a legal liability for damages on the part of some person other than the employer to pay damages, such other person having elected not to be bound by this Act, then legal proceedings may be taken against such other person to recover damages notwithstanding such employer's payment of or liability to pay compensation under this Act, but in such case if the action against such other person is brought by the injured employee or his personal representative and judgment is obtained and paid, or settlement is made with such other person, either with or without suit, then from the amount received by such employee or personal representative there shall be paid to the employer the amount of compensation paid or to be paid by him to such employee or his personal representative: Provided, that if the injured employee or his personal representative shall agree to receive compensation from the employer or to institute proceedings to recover the same or accept from the employer any payment on account of such compensation, such employer shall be subrogated to all the rights of such employee or personal representative and may maintain, or in case an action has already been instituted, may continue an action either in the name of the employee or personal representative or in his own name against such other person for a recovery of damages to which but for this section the said employee or personal representative would be entitled, but such employer shall never-

theless pay over to the injured employee or personal representative all sums collected from such other person by judgment or otherwise in excess of the amount of such compensation paid or to be paid under this Act and all costs, attorneys' fees and reasonable expenses incurred by such employer in making such collection and enforcing such liability.

§ 30. Employer's report of accident.—It shall be the duty of every employer within the provisions of this Act to send to the Industrial Board in writing an immediate report of all accidental injuries arising out of or in the course of the employment and resulting in death; it shall also be the duty of every such employer to report between the 15th and the 25th of each month to the Industrial Board all accidental injuries for which compensation has been paid under this Act, which injuries entail a loss to the employee of more than one week's time, and in case the injury results in permanent disability, a further report shall be made as soon as it is determined that such permanent disability has resulted or will result from such injury. All reports shall state the date of the injury, including the time of day or night, the nature of the employer's business, the name, address, the age, sex, conjugal condition of the injured person, the specific occupation of the injured person, the direct cause of the injury and the nature of the accident, the character of the injury, the length of disability, and, in case of death, the length of disability before death, the wages of the injured person, whether compensation has been paid to the injured person, or to his legal representatives or his heirs or next of kin, the amount of compensation paid, the amount paid for physicians', surgeons' and hospital bills, and by whom paid, and the amount paid for funeral or burial expenses, if known. The making of reports as provided herein shall release the employer covered by the provisions of this Act from making such reports to any other officer of the State.

§ 31. Principal contractor.—Any person, firm or corporation, who undertakes to do or contracts with others to do, or have done for him, them or it, any work enumerated as extra-hazardous in paragraph (b), section 3, requiring employment of employees in, on or about the premises where he, they or it, as principal or principals, contract to do such work, or any part thereof, and does not require of the person, firm or corporation undertaking to do such work for said principal or principals, that such person, firm or corporation undertaking to do such work shall insure his, their or its liability to pay the compensation provided in this Act to his, their or its employees and any such person, firm or corporation who creates or carries into operation any fraudulent scheme, artifice or device to enable him, them or it to execute such work without such person, firm or corporation being responsible to the employee, his personal representative or beneficiary entitled to such compensation under the provisions of this Act, such person, firm or corporation shall be included in the term "employer" and with the immediate employer shall be jointly and severally liable to pay the compensation herein provided for and be subject to all the provisions of this Act.

§ 32. Existing rights of action—In event of repeal.—No right of action for damages, at common law or under any other statute, existing at the time of the taking effect of this Act, shall be affected by this Act.

If the provisions of this Act relating to compensation for injuries to or death of employees shall be repealed or adjudged invalid or unconstitutional, the period intervening between the occurrence of an injury or death and such

repeal or final adjudication of invalidity, shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death, but the amount of any compensation which may have been paid for any such injury shall be deducted from any judgment for damages recovered on account of such injury. Any claim, disagreement or controversy existing or arising under "An Act to promote the general welfare of the People of this State, by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912, shall be adjusted in accordance with the provisions of said Act notwithstanding the repeal thereof, or may, by agreement of the parties, be adjusted in accordance with the method of procedure provided in this Act for the adjustment of differences, jurisdiction to adjust such differences so submitted by the parties being hereby conferred upon the Industrial Board or committee of arbitration provided for in this Act.

§ 33. Violation of Act a misdemeanor.—Any wilful neglect, refusal, or failure to do the things required to be done by any section, clause, or provision of this Act, on the part of the persons herein required to do them, or any violation of any of the provisions or requirements hereof, or any attempt to obstruct or interfere with any court officer, or any other person charged with the duty of administering or enforcing the provisions of this Act, shall be deemed a misdemeanor, punishable by a fine of not less than \$10.00 nor more than \$500.00 at the discretion of the court.

§ 33½. Name of Act.—This Act may be cited as the Workmen's Compensation Act. [Added by Act June 28, 1915.]

§ 34. Sections independent as to validity.—The invalidity of any portion of this Act shall in no way affect the validity of any other portion thereof which can be given effect without such invalid part.

§ 35. Repealing clause.—That an Act to promote the general welfare of the State of Illinois by providing compensation for accidental injuries or death suffered in the course of employment, approved June 10, 1911, in force May 1, 1912, be, and the same is, hereby repealed.

INDIANA

WORKMEN'S COMPENSATION ACT

Section

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THE INDIANA WORKMEN'S COMPENSATION ACT

(*Laws 1915, c. 106.*)

An Act to promote the prevention of industrial accidents; to cause provision to be made for adequate medical and surgical care for injured employés; to establish rates of compensation for personal injuries or death sustained by employés in the course of employment; to provide methods for insuring the payment of such compensation; to create an industrial board for the administration of the Act and to prescribe the powers and duties of such Board; to abolish the State Bureau of Inspection and provide for the transfer to said Industrial Board certain rights, powers and duties of said State Bureau of Inspection.

PART I.—RIGHTS AND REMEDIES

§ 1. **Name of Act.**—Be it enacted by the General Assembly of the State of Indiana, That this Act shall be known as "The Indiana Workmen's Compensation Act."

§ 2. **Acceptance of Act presumed—Exemption from Act.**—From and after the taking effect of this Act, every employer and every employé, except as herein stated, shall be presumed to have accepted the provisions of this Act respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment, and shall be bound thereby: unless he shall have given prior to any accident resulting in injury or death notice to the contrary in the manner herein provided.

§ 3. **Waiver of exemption—Notice of exemption—Notice of waiver, how given.**—Either an employer or an employee, who has excepted himself, by proper notice, from the operation of this Act, may at any time waive such exemption and thereby accept the provisions of this Act by giving notice as herein provided.

The notice of exemption and the notice of acceptance heretofore referred to shall be given thirty days prior to any accident resulting in injury or death, provided that if any such injury occurred less than thirty days after the date of employment, notice of such exemption or acceptance given at the time of employment shall be sufficient notice thereof. The notice shall be in writing or print in a substantial form prescribed by the Industrial Board and shall be given by the employer by posting the same in a conspicuous place in the plant, shop, office, room or place where the employé is employed, or by

serving it personally upon him; and shall be given by the employé by sending the same in registered letter addressed to the employer at his last known residence or place of business, or by giving it personally to the employer, or any of his agents upon whom a summons in civil action may be served under the laws of the State.

A copy of the notice in prescribed form shall also be filed with the Industrial Board.

§ 4. Existing and subsequent contracts of employment—Minors—Presumption and notice.—Every contract of service between any employer and employé covered by this Act, written or implied, now in operation or made or implied prior to the taking effect of this Act, shall, after the Act has taken effect, be presumed to continue; and every such contract made subsequent to the taking effect of this Act shall be presumed to have been made subject to the provisions of this Act: unless either party shall give notice, as provided in Section 3, to the other party to such contract that the provisions of this Act other than Sections 10, 11 and 67 are not intended to apply.

A like presumption shall exist equally in the case of all minors unless notice of the same character be given by or to the parent or guardian of the minor.

§ 5. Employers to insure payment of compensation.—Every employer who accepts the compensation provisions of this Act shall insure the payment of compensation to his employés in the manner hereinafter provided, and while such insurance remains in force he or those conducting his business shall only be liable to any employé for personal injury or death by accident to the extent and in the manner herein specified.

§ 6. Rights and remedies exclusive.—The rights and remedies herein granted to an employé subject to this Act on account of personal injury or death by accident shall exclude all other rights and remedies of such employé, his personal representatives, dependents or next of kin, at common law or otherwise on account of such injury or death.

§ 7. No relief from statutory penalty.—Nothing in this Act shall be construed to relieve any employer or employé from penalty for failure or neglect to perform any statutory duty.

§ 8. Compensation not allowed when.—No compensation shall be allowed for an injury or death due to the employé's wilful misconduct, including intentional self-inflicted injury, intoxication, and wilful failure or refusal to use a safety appliance or perform a duty required by statute.

The burden of proof shall be on the defendant employer.

§ 9. Employers and employés not covered by compensation provisions.—This Act except Section 67 shall not apply to casual laborers, to farm or agricultural laborers and to domestic servants, nor to employers of such persons; unless such employés and their employers voluntarily elect in the manner hereinafter specified to be bound by this Act.

§ 10. Defenses waived by employer's rejection of Act.—Every employer who elects not to operate under this Act shall not in any suit at law by an employé to recover damages for personal injury or death by accident be permitted to defend any such suit at law upon any one or all of the following grounds:

- (a) That the employé was negligent;
- (b) That the injury was caused by the negligence of a fellow employé;
- (c) That the employé had assumed the risk of the injury.

§ 11. Burdens assumed by employé by rejecting Act.—Every employé who elects not to operate under this Act shall, in any action to recover damages for personal injury or death brought against an employer accepting the compensation provisions of this Act, proceed at common law, and the employer may avail himself of the defenses of contributory negligence, negligence of a fellow servant and assumption of risk, as such defenses exist at common law.

§ 12. Rights of employer and employé when both reject Act.—When both the employer and employé elect not to operate under this Act, the liability of the employer shall be the same as though he alone had rejected the terms of this Act, and in any suit brought against him the employer shall not be permitted to avail himself of any of the common law defenses cited in Section 11.

§ 13. Employer's optional rights—Rights of employer when injury is caused by fault of third party.—Whenever an injury for which compensation is payable under this Act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employé may at his option either claim compensation or proceed at law against such other person to recover damages or proceed against both the employer and such other person, but he shall not collect from both; and if compensation is awarded under this Act the employer having paid the compensation or having become liable therefor, may collect in his own name or that of the injured employé from the other person in whom legal liability for damages exists, the indemnity paid or payable to the injured employé.

§ 14. Principal, intermediate or sub-contractors and immediate contractors—Liability—Rights against third person—Claims—Procedure—When section applies.—A principal, intermediate, or sub-contractor shall be liable for compensation to any employé injured while in the employ of any one of his sub-contractors and engaged upon the subject matter of the contract to the same extent as the immediate employer.

Any principal, intermediate, or sub-contractor who shall pay compensation under the foregoing provision may recover the amount paid from any person who, independently of this section, would have been liable to pay compensation to the injured employé.

Every claim for compensation under this section shall in the first instance be presented to and instituted against the immediate employer, but such proceeding shall not constitute a waiver of the employé's rights to recover compensation under this Act from the principal or intermediate contractor, provided that the collection of full compensation from one employer shall bar recovery by the employé against any others, nor shall he collect from all a total compensation in excess of the amount for which any of the said contractors is liable.

This section shall apply only in cases where the injury occurred, on, in or about the premises on which the principal contractor has undertaken to execute work or which are otherwise under his control or management.

§ 15. Act not to be avoided by contracts.—No contract or agreement, written, or implied, no rule, regulation or other device, shall in any manner operate to relieve any employer in whole or in part of any obligation created by this Act except as herein provided.

§ 16. Compensation—Preference.—All rights of compensation granted by this Act shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages for labor.

§ 17. Claim exempt and not assignable.—No claim for compensation under this Act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors.

§ 18. State and municipal corporations subject to Act.—The provisions of this Act except Sections 3, 4, 10, 11, and 12 shall apply to the State and any municipal corporation within the State or any political division thereof, and to the employes thereof.

§ 19. Employers in interstate commerce not covered.—This Act except Section 67 shall not apply to employes engaged in interstate or foreign commerce, nor to their employers, in case the laws of the United States provide for compensation or for liability for injury or death by accident of such employes.

§ 20. Accident—Where covered.—Every employer and employe under this Act, except as provided in Section 19, shall be bound by the provisions of the Act whether injury by accident or death resulting from such injury occurs within the State or in some other State or in a foreign country.

§ 21. Does not apply to injuries occurring prior to September 1, 1915.—The provisions of this Act shall not apply to injuries or death nor to accidents which occurred prior to the taking effect of this Act.

PART II.—COMPENSATION SCHEDULE

§ 22. Notice of injury—When given.—Every injured employe or his representative shall immediately upon the occurrence of an injury or as soon thereafter as practicable, give or cause to be given to the employer written notice of the injury and the employe shall not be entitled to physician's fees nor to any compensation which may have accrued, under the terms of this Act, prior to the giving of such notice; unless it can be shown that the employer, his agent or representative had knowledge of the injury or death, or that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity or the fraud or deceit of some third person, or for equally good reason; but no compensation shall be payable unless such written notice is given within thirty days after the occurrence of the injury or death, unless reasonable excuse is made to the satisfaction of the Industrial Board for not giving such notice.

§ 23. Contents of notice—By whom signed—Defects no defense—How served.—The notice provided in the foregoing section shall state in ordinary language the name and address of the employe, the time, place, nature and cause of the injury or death, and shall be signed by the employe or by a person on his behalf, or in the event of his death by any one or more of his dependents or by a person on their behalf.

No defect or inaccuracy in the notice shall be a bar to compensation unless the employer shall prove that his interest was prejudiced thereby, and then only to the extent of such prejudice.

Said notice shall be given personally to the employer or any of his agents upon whom a summons in civil action may be served under the laws of the

State, or may be sent by registered letter addressed to the employer at his last known residence or place of business.

§ 24. Limitation—Two years.—The right to compensation under this Act shall be forever barred unless within two years after the injury or if death results therefrom, within two years after such death, a claim for compensation thereunder shall be filed with the Industrial Board.

§ 25. Employer must furnish physician for first thirty days—Employé must accept physician—Refusal to accept bars compensation—Physician's services in emergency.—During the thirty days after an injury the employer shall furnish or cause to be furnished free of charge to the injured employé, and the employé shall accept, and during the whole or any part of the remainder of his disability resulting from the injury, the employer may, at his own option, continue to furnish or cause to be furnished, free of charge to the employé, and the employé shall accept, an attending physician, provided, however, unless otherwise ordered by the Industrial Board, and in addition such surgical and hospital service and supplies as may be deemed necessary by said attending physician, or the Industrial Board.

The refusal of the employé to accept such service when provided by the employer shall bar said employé from further compensation until such refusal ceases, and no compensation shall at any time be payable for the period of suspension unless in the opinion of the Industrial Board the circumstances justify the refusal, in which case the Board may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical care for the first thirty days, as herein specified, or for other good reason, a physician other than that provided by the employer is called to treat the injured employé during the first thirty days, the reasonable cost of such service shall be paid by the employer subject to the approval of the Industrial Board.

§ 26. Medical charges.—The pecuniary liability of the employer for medical, surgical and hospital service herein required shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person.

§ 27. Examination of injured—Result not privileged—Refusal to submit, effect of—Autopsy.—After an injury and during the period of resulting disability, the employé, if so requested by his employer or ordered by the Industrial Board, shall submit himself to examination, at reasonable times and places, by a duly qualified physician or surgeon designated and paid by the employer or the Industrial Board. The employé shall have the right to have present at any such examination any duly qualified physician or surgeon provided and paid by him. No fact communicated to, or otherwise learned by any physician or surgeon who may have attended or examined the employé, or who may have been present at any examination, shall be privileged, either in the hearings provided for in this Act, or any action at law brought to recover damages against any employer who may have accepted the compensation provisions of this Act. If the employé refuses to submit himself to or in any way obstructs such examination, his right to compensation and his right to take or prosecute any proceeding under this Act shall be suspended until such refusal or obstruction ceases, and no compensation shall at any time be payable for the period of suspension unless in the opinion of the Industrial Board the circumstances justify the refusal or obstruction.

The employer, or the Industrial Board, shall have the right in any case of death to require an autopsy at the expense of the party requiring the same.

§ 28. No compensation for first fourteen days.—No compensation shall be allowed for the first fourteen calendar days of disability resulting from an injury except the benefits provided for in Section 25; but if disability extends beyond that period compensation shall commence with the fifteenth day after the injury.

§ 29. Total disability—Compensation rates.—Where the injury causes total disability for work, there shall be paid to the injured employé during such total disability, but not including the first two weeks thereof, a weekly compensation equal to fifty-five per cent. of his average weekly wages for a period not to exceed five hundred weeks.

§ 30. Partial disability—Compensation rates.—Where the injury causes partial disability for work, there shall be paid to the injured employé during such disability but not including the first two weeks thereof, a weekly compensation equal to one-half of the difference between his "average weekly wages" and the weekly wages at which he is actually employed after the injury, for a period of not to exceed three hundred weeks.

In case the partial disability begins after a period of total disability, the latter period shall be deducted from the maximum period allowed for partial disability.

§ 31. Schedule.—For injuries in the following schedule the employé shall receive in lieu of all other compensation a weekly compensation equal to fifty-five per cent. of his average weekly wages for the periods stated against such injuries respectively, to wit:

(a) For the loss by separation of not more than one phalange of a thumb or not more than two phalanges of a finger, 15 weeks;

(b) For the loss by separation of more than two phalanges of a finger or of a whole finger or a toe, 30 weeks;

(c) For the loss by separation of more than one phalange of a thumb or of a whole thumb, 60 weeks;

(d) For the permanent and irrecoverable loss of the sight of one eye or its reduction to one-tenth of normal vision with glasses, 100 weeks;

(e) For the loss by separation of one foot at or above the ankle joint, 125 weeks;

(f) For the loss by separation of one hand at or above the wrist joint, 150 weeks;

(g) For the loss by separation of one leg at or above the knee joint, 175 weeks;

(h) For the loss by separation of one arm at or above the elbow joint, 200 weeks;

(i) For the permanent and complete loss of hearing, 75 weeks.

In all other cases of permanent partial disability, including any disfigurement which may impair the future usefulness or opportunities of the injured employé, compensation in lieu of all other compensation shall be paid when and in the amount determined by the Industrial Board, not to exceed fifty-five per cent. of average weekly wages per week for a period of two hundred weeks.

§ 32. Refusal of suitable employment.—If an injured employé refuses employment suitable to his capacity procured for him, he shall not be en-

titled to any compensation at any time during the continuance of such refusal unless in the opinion of the Industrial Board such refusal was justifiable.

§ 33. Subsequent injury.—If an employé has sustained a permanent injury in another employment than that in which he received a subsequent permanent injury by accident, such as specified in Section 31, he shall be entitled to compensation for the subsequent injury in the same amount as if the previous injury had not occurred.

§ 34. Second injury—Effect on compensation.—If an employé received an injury for which compensation is payable while he is still receiving or entitled to compensation for a previous injury in the same employment, he shall not at the same time be entitled to compensation for both injuries unless it be for a permanent injury, such as specified in Section 31; but he shall be entitled to compensation for that injury and from the time of that injury which will cover the longest period and the largest amount payable under this Act.

§ 35. Two permanent injuries—Compensation for.—If an employé receives a permanent injury such as specified in Section 31, after having sustained another permanent injury in the same employment, he shall be entitled to compensation for both injuries but the total compensation shall be paid by extending the period and not by increasing the amount of weekly compensation.

When the previous and subsequent permanent injuries result in total permanent disability, compensation shall be payable for permanent total disability, but payments made for the previous injury shall be deducted from the total payment of compensation due.

§ 36. Death from other cause—Balance due—To whom paid.—When an employé receives or is entitled to compensation under this Act for an injury and dies from any other cause than the injury for which he was entitled to compensation, payment of the unpaid balance of compensation shall be made to his next of kin dependent upon him for support.

§ 37. Death from injury—Burial expenses—Compensation to dependents.—Where death results from the injury within three hundred weeks, there shall be paid in addition to burial expenses not to exceed one hundred dollars, a weekly compensation equal to fifty-five per cent. of the deceased's average weekly wages during such remaining part of three hundred weeks as compensation shall not have been paid to the deceased for total or partial disability, to all dependents of the employé wholly dependent upon his earnings for support at the time of the injury. If the employé leaves dependents only partially dependent upon his earnings for support at the time of the injury, the weekly compensation to those dependent shall, in addition to burial expenses, not to exceed one hundred dollars, be in the same proportion to the weekly compensation for persons wholly dependent as the amount contributed by the deceased employé to such partial dependent bears to his annual earnings at the time of the injury.

§ 38. Dependents defined—Division of death benefits—Divorce and remarriage.—The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employé:

- (a) A wife upon a husband with whom she lives at the time of his death.
- (b) A husband upon a wife with whom he lives at the time of her death if he is then incapable of self-support and actually dependent upon her.

(c) A boy under the age of 18, or a girl under the age of 18 upon the parent with whom he or she is living at the time of the death of such parent, there being no surviving dependent parent. If a child is over the ages specified above, but physically or mentally incapacitated from earning, he or she shall be presumed to be totally dependent if there is no surviving dependent parent.

As used in this section, the term "boy," "girl" or "child" shall include step-children, legally adopted children, posthumous children, acknowledged illegitimate children, but shall not include married children; the term "parent" shall include step-parents and parents by adoption.

In all other cases, questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury; and in such other cases if there is more than one person wholly dependent, the death benefit shall be divided among them; and persons partly dependent, if any, shall receive no part thereof; if there is no one wholly dependent and more than one person partly dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

For the purposes of this Act, the dependence of a widow or widower of a deceased employé, and dependent children living with said widow or widower shall terminate with remarriage, and the amount received by her shall be divided among other dependents in the proportion in which they are receiving compensation, and in the event of the separation of the wife from her second or subsequent husband and her obtaining a divorce upon her own application, then she shall receive the same compensation for which she would have been entitled had she not remarried, but the time from the date of the remarriage to the date of the divorce shall be deducted from the time compensation runs, and the dependence of a child, except a child physically or mentally incapacitated from earning, shall terminate with the attainment of 18 years of age.

§ 39. No dependents—Burial expenses.—If the deceased employé leaves no dependents the employer shall pay the burial expense of the deceased, not to exceed one hundred dollars.

§ 40. Wage limits—Maximum liability.—In computing compensation under the foregoing sections, the average weekly wages of an employé shall be considered not to be more than twenty-four dollars, nor less than ten dollars. And provided further, That the total compensation payable under this Act shall in no case exceed five thousand dollars (\$5,000).

§ 41. Credit for advance payments.—Any payments made by the employer to the injured employé during the period of his disability, or to his dependents, which by the terms of this Act were not due and payable when made, may, subject to the approval of the Industrial Board, be deducted from the amount to be paid as compensation: Provided, That in case of disability such deduction shall be made by shortening the period during which compensation must be paid and not by reducing the amount of the weekly payments unless otherwise hereinafter specified.

§ 42. Monthly or quarterly payments.—The Industrial Board upon the application of either party, may, in its discretion, having regard to the welfare of the employé and the convenience of the employer, authorize compensation to be paid monthly or quarterly instead of weekly.

§ 43. Lump sum payments.—Whenever any weekly payment has been continued for not less than 26 weeks, the liability therefor may in unusual

cases, where the parties agree and the Industrial Board deems it to be for the best interest of the employé or his dependents, be redeemed by the payment, in whole or in part, by the employer, of a lump sum which shall be fixed by the Board, but in no case to exceed the commutable value of the future installments which may be due under this Act. The Board may, however, in its discretion at any time in the case of a minor who has received permanently disabling injuries, either partial or total, provide that he be compensated in whole or in part by the payment of a lump sum, the amount of which shall be fixed by the Board, but in no case to exceed the commutable value of the future installments which may be due under this Act.

§ 44. Payment of lump sum to trustee.—Whenever the Industrial Board deems it expedient, any lump sum under the foregoing section shall be paid by the employer to some suitable person or corporation appointed by the circuit or superior court, as trustee, to administer the same for the benefit of the person entitled thereto, in the manner provided by the Board. The receipt of such trustee for the amount as paid shall discharge the employer or anyone else who is liable therefor.

§ 45. Board may modify award on change in conditions.—Upon its own motion or upon the application of any party in interest on the ground of a change in condition, the Industrial Board may at any time review any award and on such review may make an award ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in this Act, and shall immediately send to the parties a copy of the award. No such review shall affect such award as regards any moneys paid.

§ 46. Receipt for payments.—Whenever payment of compensation is made to a widow or widower for her or his use, or for her or his use and the use of a child or children, the written receipt thereof by such widow or widower shall acquit the employer.

Whenever payment is made to any person eighteen years of age or over, the written receipt of such person shall acquit the employer.

Whenever payment is made to a minor under the age of eighteen years, or to a dependent child over the age of eighteen, the same shall be made to some suitable person or corporation appointed by the circuit or superior court as trustee, and the receipt of such trustee shall acquit the employer: Provided, however, That the Industrial Board may review the facts and circumstances surrounding the payment of any money and the taking of any receipt as provided in this section and may set the same aside either for fraud or undue influence.

§ 47. Action by guardian or trustee.—If an injured employé is mentally incompetent or is under eighteen years of age at the time when any right or privilege accrues to him under this Act, his guardian or trustee may in his behalf claim and exercise such right or privilege.

§ 48. Time limitations—When not to run.—No limitation of time provided in this Act shall run as against any person who is mentally incompetent or a minor dependent, so long as he has no guardian or trustee.

§ 49. Joint employers—Liability for compensation.—Whenever any employé for whose injury or death compensation is payable under this Act shall at the time of the injury be in the joint service of two or more employers subject to this Act, such employers shall contribute to the payment

of such compensation in proportion to their wage liability to such employes: Provided, however, That nothing in this section shall prevent any reasonable arrangement between such employers for a different distribution as between themselves of the ultimate burden of compensation.

PART III.—ADMINISTRATION

§ 50. Industrial Board of Indiana—Members—Term.—There is hereby created a Board which shall be known as the Industrial Board of Indiana, which shall consist of three members, not more than two of whom shall belong to the same political party, appointed by the Governor, one of whom he shall designate as chairman. Each member of the Board shall hold office for four years, and until his successor is appointed and qualified, except that when the Board is first constituted, one member shall be appointed for three years, one for four years, and the third shall be the present Chief of the State Bureau of Inspection, who shall serve for one year as hereinafter provided. Thereafter, upon the expiration of the term of any member, the Governor shall appoint his successor for the full term of four years.

Each member of the Board shall devote his entire time to the duties of his office and shall not hold any position of trust or profit or engage in any occupation or business interfering or inconsistent with his duties as such member.

§ 51. Salaries—Secretary and assistants—Traveling expenses.—The salary of each member of the Board shall be four thousand dollars per year each.

The Board may appoint a secretary at a salary of not more than twenty-five hundred dollars a year and may remove him. The Board may also, subject to the approval of the Governor, employ such clerical and other assistants as it may deem necessary and fix the compensation of all persons so employed.

The members of the Board and its assistants shall be entitled to receive from the State their actual and necessary expenses while traveling on the business of the Board, but such expenses shall be sworn to by the person who incurred the same and shall be approved by the chairman of the Board before payment is made.

All salaries and expenses of the Board shall be audited and paid out of the State Treasury in the manner prescribed for similar expenses in other departments or branches of the State service.

§ 52. Bureau of inspection abolished—Duties transferred—Appointments by Industrial Board.—The rights, powers and duties conferred by law upon the State Bureau of Inspection of the State of Indiana are hereby continued in full force and are hereby transferred to the Industrial Board hereby created and shall be held and exercised by them under the laws heretofore in force and the said State Bureau of Inspection is hereby abolished. The present Chief Inspector of said State Bureau of Inspection is hereby made a member of said Industrial Board until the expiration of one year from the date of the taking effect of this Act and until his successor is appointed and qualified. The deputy inspectors heretofore appointed by the Governor as deputy inspectors in said State Bureau of Inspection, to wit: Inspector of Buildings, Factories and Workshops, Inspector of Boilers and Inspector of Mines and Mining, together with their assistant inspectors, are hereby continued in their respective offices, at their present salaries, until the expira-

tion of the terms for which they are respectively appointed and until their successors are appointed and qualified and each of them respectively shall have and perform all the rights, powers and duties now held and performed by each of them respectively, together with such other rights, powers and duties as may be prescribed by said Industrial Board. Upon the termination of the said terms of office for which said deputy inspectors have been appointed, said Industrial Board, with the concurrence of the Governor, shall appoint their successors to serve during the pleasure of said Industrial Board.

§ 53. Duties of Labor Commission abolished.—All the rights, powers and duties of the labor commission of the State of Indiana, heretofore created and subsequently transferred to and vested in the State Bureau of Inspection, are hereby abolished.

§ 54. Office of Board and sessions.—The Board shall be provided with adequate offices in the Capitol or some other suitable building in the city of Indianapolis, in which the records shall be kept and its official business be transacted during regular business hours; it shall also be provided with necessary office furniture, stationery and other supplies.

The Board or any member thereof may hold sessions at any place within the State as may be deemed necessary.

§ 55. Rules—Procedure—County sheriff—Witness fees—Attendance of witnesses, how enforced.—The Board may make rules not inconsistent with this Act for carrying out the provisions of this Act. Processes and procedure under this Act shall be as summary and simple as reasonably may be. The Board or any member thereof shall have the power for the purpose of this Act to subpoena witnesses, administer or cause to have administered oaths, and to examine or cause to have examined such parts of the books and records of the parties to a proceeding as relate to questions in dispute.

The county sheriff shall serve all subpoenas of the Board and shall receive the same fees as now provided by law for like service in civil actions; each witness who appears in obedience to such subpoena of the Board shall receive for attendance the fees and mileage for witnesses in civil cases in the courts.

The circuit or superior court shall, on application of the Board or any member thereof, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records.

§ 56. Forms to be furnished by Board—Annual report of Board.—The Board shall prepare and cause to be printed, and upon request furnish free of charge to any employer or employé, such blank forms and literature as it shall deem requisite to facilitate or promote the efficient administration of this Act.

The Board shall tabulate the accident reports received from employers in accordance with Section 67, and shall publish the same in the annual report of the Board and as often as it may deem advisable, in such detailed or aggregate form as it may deem best. The name of the employer or employé shall not appear in such publications and the employers' reports themselves shall be private records of the Board and shall not be open for public inspection except for the inspection of the parties directly involved, unless in the opinion of the Board the public interest shall require otherwise. These reports shall not be used as evidence against any employer in any suit at law brought by any employé for the recovery of damages.

§ 57. Agreement as to compensation—How enforced.—If after fourteen days from the date of the injury or at any time in case of death, the

employer and the injured employé or his dependents reach an agreement in regard to compensation under this Act, a memorandum of the agreement in the form prescribed by the Industrial Board shall be filed with the Board; otherwise such agreement shall be voidable by the employé or his dependents.

If approved by the Board, thereupon the memorandum shall for all purposes be enforceable by the court decree as hereinafter specified. Such agreement shall be approved by said Board only when the terms conform to the provisions of this Act.

§ 58. Disagreements—Application for hearing—Notice of hearing.—If the employer and the injured employé or his dependents fail to reach an agreement in regard to compensation under this Act, or if they have reached such an agreement which has been signed and filed with the Board and compensation has been paid or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make an application to the Industrial Board for a hearing in regard to the matters at issue and for a ruling thereon.

Immediately after such application has been received the Board shall set the date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred.

§ 59. Hearing and findings.—The Board or any of its members shall hear the parties at issue and their representatives and witnesses and shall determine the dispute in a summary manner. The award, together with a statement of the findings of fact, rulings of law and any other matters pertinent to the question at issue shall be filed with the record of proceedings, and a copy of the award shall immediately be sent to the parties in dispute.

§ 60. Review by full Board.—If an application for review is made to the Board within seven days from the date of the award, the full Board, if the first hearing was not held before the full Board, shall review the evidence, or, if deemed advisable, as soon as practicable hear the parties at issue, their representatives and witnesses and shall make an award and file same in like manner as specified in the foregoing section.

§ 61. Appeal from Board.—An award of the Board, as provided in Section 59, if not reviewed in due time, or an award of the Board upon such review as provided in Section 60, shall be conclusive and binding as to all questions of fact, but either party to the dispute may within thirty days from the date of the award appeal to the appellate court for errors of law under the same terms and conditions as govern appeals in ordinary civil actions. The Board, of its own motion, may certify questions of law to said appellate court for its decision and determination.

§ 62. Agreement and awards—How enforced.—Any party in interest may file in the circuit or superior court of the county in which the injury occurred, a certified copy of a memorandum of agreement approved by the Board or of an order or decision of the Board, or of an award of the Board unappealed from, or of an award of the Board rendered upon an appeal, whereupon said court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though said judgment had been rendered in a suit duly heard and determined by said court.

Any such judgment of said circuit or superior court unappealed from or affirmed on appeal or modified in obedience to the mandate of the appellate court, shall be modified to conform to any decision of the Industrial Board, ending, diminishing or increasing any weekly payment under the provisions of Section 45 of this Act upon the presentation to it of a certified copy of such decision.

§ 63. Costs of suit.—If the Industrial Board or any court before whom any proceedings are brought under this Act shall determine that such proceedings have been brought, prosecuted or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who has so brought, prosecuted or defended them.

§ 64. Appointment of physician to examine and testify.—The Board or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination of the employé and to testify in respect thereto. Said physician or surgeon shall be allowed traveling expenses and a reasonable fee to be fixed by the Board, not exceeding ten dollars for each examination and report, but the Board may allow additional reasonable amounts in extraordinary cases.

The fees and expenses of such physician or surgeon shall be paid by the State.

§ 65. Fees of attorneys and physicians.—Fees of attorneys and physicians and charges of hospitals for services under this Act shall be subject to the approval of the Board.

§ 66. All disputed questions determined by Board.—All questions arising under this Act, if not settled by agreement of the parties interested therein with the approval of the Board, shall be determined by the Board except as otherwise herein provided for.

§ 67. Record and reports of injuries by employers—Contents of reports—Penalty for failure to report.—Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employés in the course of their employment. Within one week after the occurrence and knowledge thereof, as provided in Section 2, of an injury to an employé causing his absence from work for more than one day, a report thereof shall be made in writing and mailed to the Industrial Board on blanks to be procured from the Board for the purpose.

Upon the termination of the disability of the injured employé, or if the disability extends beyond a period of 60 days, then also at the expiration of such period the employer shall make a supplementary report to the Board on blanks to be procured from the Board for the purpose.

The said reports shall contain the name, nature and location of the business of the employer, and name, age, sex, wages and occupation of the injured employé and shall state the date and hour of the accident causing the injury, the nature and cause of the injury and such other information as may be required by the Board.

Any employer who refuses or neglects to make the report required by this section shall be liable for a penalty of not more than twenty-five dollars for each refusal or neglect, to be recoverable in any court of competent jurisdiction in a suit by the Board.

PART IV.—INSURANCE

§ 68. Employer to insure liability—Proof of ability to pay direct—Board may require indemnity.—Every employer under this act shall either insure or keep insured his liability hereunder in some corporation, association or organization authorized to transact the business of workmen's compensation insurance in this State, or shall furnish to the Industrial Board satisfactory proof of his financial ability to pay direct the compensation in the amount and manner and when due as provided for in this Act. In the latter case the Board may in its discretion require the deposit of an acceptable security, indemnity or bond to secure the payment of compensation liabilities as they are incurred.

§ 69. Proof of compliance with § 68—Penalty for failure or refusal.—Every employer accepting the compensation provisions of this Act shall within thirty days after this Act takes effect file with the Board in form prescribed by it, and thereafter annually or as often as may be necessary, evidence of his compliance with the provisions of Section 68 and all others relating thereto.

If such employer refuses or neglects to comply with these provisions he shall be punished by a fine of ten cents for each employé at the time of the insurance becoming due, but not less than one dollar nor more than fifty dollars for each day of such refusal or neglect and until the same ceases, and he shall be liable during continuance of such refusal or neglect to an employé either for compensation under this Act or at law in the same manner as provided for in Section 10.

§ 70. Certificate of Board—Revocation.—Whenever an employer has complied with the provisions of Section 68, relating to self-insurance, the Industrial Board shall issue to such employer a certificate which shall remain in force for a period fixed by the Board, but the Board may upon at least sixty days' notice and a hearing to the employer revoke the certificate upon satisfactory evidence for such revocation having been presented. After the expiration of one year from such revocation the Board may grant a new certificate to the employer upon his petition.

§ 71. Mutual or reciprocal insurance.—For the purpose of complying with the provisions of Section 68, groups of employers, to form mutual insurance associations or reciprocal insurance associations subject to such reasonable conditions and restrictions as may be fixed by the Industrial Board, are hereby authorized. Membership in such mutual insurance associations or reciprocal insurance associations so approved together with evidence of the payment of premiums due, shall be evidence of compliance with Section 68.

§ 72. Substitute system instead of insurance.—Subject to the approval of the Industrial Board any employer may enter into or continue any agreement with his employés to provide a system of compensation, benefit or insurance in lieu of the compensation and insurance provided by this Act. No such substitute system shall be approved unless it confers benefits upon injured employés at least equivalent to the benefits provided by this Act, nor if it requires contributions from the employés unless it confers benefits in addition to those provided under this Act at least commensurate with such contributions.

Such substitute system may be terminated by the Industrial Board on reasonable notice and hearing to the interested parties if it shall appear that the same is not fairly administered or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purposes of this Act; and in this case the Board shall determine upon the proper distribution of all remaining assets, if any, subject to the right of any party in interest to take an appeal to the appellate court.

§ 73. **Notice to employer is notice to insurer—Jurisdiction.**—All policies insuring the payment of compensation under this Act must contain a clause to the effect that as between the employer and the insurer the notice to or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purposes of this Act shall be jurisdiction of the insurer; and that the insurer shall in all things be bound by and subject to the awards, judgments or decrees rendered against such insured.

§ 74. **Agreement of insurer.**—No policy of insurance against liability arising under this Act shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to same all benefits conferred by this Act, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy, or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation enforceable in his name.

§ 75. **Approval of policy forms.**—Every policy for the insurance of the compensation herein provided, or against liability thereof, shall be deemed to be made subject to the provisions of this Act. No corporation, association or organization shall enter into any such policy of insurance unless its form shall have been approved by the Industrial Board.

Part V.—DEFINITIONS AND MISCELLANEOUS PROVISIONS

§ 76. **Definitions.**—In this Act unless the context otherwise requires:

(a) **"Employer" defined.**—"Employer" shall include the State and any municipal corporation within the State or any political division thereof, and any individual, firm, association or corporation or the receiver or trustee of the same or the legal representatives of a deceased employer, using the services of another for pay. If the employer is insured it shall include his insurer so far as applicable.

(b) **"Employé" defined.**—"Employé" shall include every person, including a minor, in the service of another under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation or profession of the employer. Any reference to an employé who has been injured shall, when the employé is dead, also include his legal representatives, dependents and other persons to whom compensation may be payable.

(c) **"Average weekly wages" defined.**—"Average weekly wages" shall mean the earnings of the injured employé in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of injury, divided by fifty-two; but if the injured employé lost more than seven consecutive calendar days during such

period, although not in the same week, then the earnings for the remainder of such fifty-two weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than fifty-two weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employé earned wages shall be followed provided results just and fair to both parties will thereby be obtained. Where by reason of the shortness of the time during which the employé has been in the employment of his employer or the casual nature or terms of the employment, it is impracticable to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the fifty-two weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer, or if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

Wherever allowances of any character made to an employé in lieu of wages are specified part of the wage contract, they shall be deemed a part of his earnings.

(d) Injury not to include disease.—"Injury" and "Personal Injury" shall mean only injury by accident arising out of and in the course of the employment and shall not include a disease in any form except as it shall result from the injury.

§ 77. Validity of Act.—If any section or provision of this Act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of this Act as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

§ 78. Acts repealed.—All acts and parts of acts inconsistent with any provisions of this Act are hereby repealed to the extent of such inconsistency.

§ 79. Takes effect.—This Act shall take effect on the first day of September, 1915, except that Part III with the exception of Section 67, shall take effect upon the passage of this Act.

§ 80. Appropriation.—For the purpose of paying the salaries and expenses of the members of the Industrial Board and its employés, the sum of \$70,000 per year or so much thereof as may be necessary is hereby appropriated.

§ 81. Pending litigation.—The provisions of this Act shall not affect pending litigation.

§ 82. Emergency.—Whereas, An emergency exists for the immediate taking effect of Part III of this Act with the exception of Section 67, said Part III with said exception shall be in full force from and after the passage of this Act.

IOWA

EMPLOYER'S LIABILITY OR WORKMEN'S COMPENSATION LAW

Section

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EMPLOYER'S LIABILITY OR WORKMEN'S COMPENSATION LAW

(*Laws 1913, c. 147, p. 154; Code Supp. 1913, c. 8-a, p. 938.*)

An act relating to employers' liability for personal injury sustained by employees in line of duty, fixing compensation therefor, securing the payment thereof, providing for the appointment of a commissioner and defining his duties.

Be it Enacted by the General Assembly of the State of Iowa:

PART I

§ 1. (2477-m) (a) Employer's acceptance presumed—Exclusive liability—Excepted employments.—Except as by this act otherwise provided, it shall be conclusively presumed that every employer as defined by this act has elected to provide, secure and pay compensation according to the terms, conditions, and provisions of this act for any and all personal injuries sustained by an employé arising out of and in the course of the employment; and in such cases the employer shall be relieved from other liability for recovery of damages or other compensation for such personal injury, unless by the terms of this act otherwise provided; but this act shall not apply to any household or domestic servant, farm or other laborer engaged in agricultural pursuits, nor persons whose employment is of a casual nature.

(b) Compulsory on state and subdivisions thereof.—Where the state, county, municipal corporation, school district, cities under special charter and commission form of government is the employer, the terms, conditions and provisions of this act for the payment of compensation and amount thereof for such injury sustained by an employé of such employer shall be exclusive, compulsory and obligatory upon both employer and employé.

(c) Abolition of defenses.—An employer having the right under the provisions of this act to elect to reject the terms, conditions and provisions thereof and in such case exercises the right in the manner and form by this act provided, such employer shall not escape liability for personal injury sustained by an employé of such employer when the injury sustained arises out of and in the usual course of the employment, because:

(1) The employé assumed the risks inherent in or incidental to or arising out of his or her employment; or the risks arising from the failure of the employer to provide and maintain a reasonably safe place to work, or the risks arising from the failure of the employer to furnish reasonably safe tools or appliances, or because the employer exercised reasonable care in selecting reasonably competent employés in the business:

(2) That the injury was caused by the negligence of the co-employé.

(3) That the employé was negligent unless and except it shall appear that such negligence was willful and with intent to cause the injury; or the result of intoxication on the part of the injured party.

(d) Negligence of employer—Notice of non-election—Form.—In actions by an employé against an employer for personal injury sustained arising out of and in the course of the employment where the employer has elected to reject the provisions of this act, it shall be presumed that the injury to the employé was the direct result and growing out of the negligence of the employer; and that such negligence was the proximate cause of the injury; and in such cases the burden of proof shall rest upon the employer to rebut the presumption of negligence.

Every such employer shall be conclusively presumed to have elected to provide, secure and pay compensation to employés for injuries sustained arising out of and in the course of the employment according to the provisions of this act, unless and until notice in writing of an election to the contrary shall have been given to the employés by posting the same in some conspicuous place at the place where the business is carried on, and also by filing notice with the Iowa industrial commissioner with return thereon by affidavit show-

ing the date that notice was posted as by this act provided. Provided, however, that any employer beginning business after the taking effect of this act and giving notice at once of his desire not to come under the provisions of this act, shall not be considered as under the act. Provided, however, that such employer shall not be relieved of the payment of compensation as by this act provided until thirty days after the filing of such notice with the Iowa industrial commissioner, which notice shall be substantially in the following form:

◆

Employers' Notice to Reject

To the employes of the undersigned, and the Iowa Industrial Commissioner:

You and each of you are hereby notified that the undersigned rejects the terms, conditions and provisions to provide, secure and pay compensation to employes of the undersigned for injuries received as provided in the acts of the (——) general assembly known as chapter (——) and elects to pay damages for personal injuries received by such employe under the common law and statutes of this state modified by sub-divisions one, two, three and four of section one, chapter (——) of the acts of the (——) general assembly and acts amendatory thereto.

Signed _____.

State of Iowa, } ss:
_____ County. }

The undersigned being first duly sworn deposes and says that a true, correct and verbatim copy of the foregoing notice was on the _____ day of _____, 19—, posted at (state fully place where posted).

Subscribed and sworn to before me by _____ this _____ day of _____, 19—. _____, Notary Public.

The employer shall keep such notice posted in some conspicuous place which shall apply to the employes subsequently employed by the employer with the same force and effect and to the same extent and in like manner as employes in the employ at the time the notice was given.

Where the employer and employe have not given notice of an election to reject the terms of this act, every contract of hire express or implied, shall be construed as an implied agreement between them and a part of the contract on the part of the employer to provide, secure and pay, and on the part of the employe to accept compensation in the manner as by this act provided for all personal injuries sustained arising out of and in the course of the employment.

§ 2. (2477-m1) Intentional injury and intoxication.—No compensation under this act shall be allowed for an injury caused:

(a) By the employe's willful intention to injure himself or to willfully injure another; nor shall compensation be paid to an injured employe if injury is sustained where intoxication of the employe was the proximate cause of the injury.

§ 3. (2477-m2) (a) Exclusive remedy—Presumptive acceptance.—The rights and remedies provided in this act for an employe on account of an injury shall be exclusive of all other rights and remedies of such employe, his personal or legal representatives, dependents or next of kin, at common law or otherwise on account of such injury; and all employes affected by this act shall be conclusively presumed to have elected to take compensation in accordance with the terms, conditions and provisions of this act until notice in writing shall have been served upon his employer; and

also on the Iowa industrial commissioner, with return thereon by affidavit showing the date upon which notice was served upon the employer.

(b) Employé's rejection—Notice—Rejection influenced by employer.—In the event such employé elects to reject the terms, conditions and provisions of this act, the rights and remedies thereof shall not apply where an employé brings an action or takes proceedings to recover damages or compensation for injuries received growing out of and in the course of his employment, except as otherwise provided by this act; and in such actions where the employé has rejected the terms of this act the employer shall have the right to plead and rely upon any and all defenses including those at common law, and the rules and defenses of contributory negligence, assumption of risk and fellow-servant shall apply and be available to the employer as by statute authorized unless otherwise provided in this act. Provided, however, that if an employé sustains an injury as the result of the employer's failure to furnish or failure to exercise reasonable care to keep or maintain any safety device required by statute or rule, or violation of any of the statutory provisions or rules and regulations now or hereafter in force relating to safety of employés, the doctrine of assumed risk in such case growing out of the negligence of the employer shall not apply or be available as defensive matter to such offending party. The notice required to be given by an employé shall be substantially in the following form:

Employé's Notice to Reject

To ——— (name of employer) and the Iowa Industrial Commissioner:

You and each of you are hereby notified that the undersigned hereby elects to reject the terms, conditions and provisions of an act for the payment of compensation as provided by the acts of the (——) general assembly and acts amendatory thereto, and elects to rely upon the common law as modified by section three of the acts of the (——) general assembly for the right to recover for personal injury which I may receive, if any, growing out of and arising from the employment while in line of duty for my employer above named.

Dated this ——— day of ———, 19——.

Signed ———.

State of Iowa, } ss:
——— County. }

The undersigned being first duly sworn deposes and says that the written notice was on the ——— day of ———, 19——, served on the within named employer of the undersigned by delivering to (name of person served) a true, correct and verbatim copy thereof.

Subscribed and sworn (or affirmed) to before me by the said ——— this ——— day of ———, 19——. ———, Notary Public.

In any case where an employé or one who is an applicant for employment elects to reject the terms, conditions, and provisions of this act, he shall, in addition to the notice required by sub-division (b) of section 3 of this act, state in an affidavit to be filed with said notice who, if any, person, requested, suggested, or demands of such person to exercise the right to reject the provisions of this act. And if request, suggestion, or demand has been made of such employé by any person, such employé shall give and state the name of the person who made the request, suggestion, or demand, and all of the circumstances relating thereto, the date and place when and where made, and

persons present, and if it be found that the employer of such employé, or an employer to whom an applicant for employment, or any person a member of the firm, association, corporation, or agent or official of such employer, made a request, suggestion, or demand of such employé or applicant for employment to reject the terms, conditions and provisions of this act, such request, suggestion, or demand if made under such conditions, shall be conclusively presumed to have been sufficient to have unduly influenced such employé or an applicant for employment to exercise the right to reject the terms of this act, and the rejection made under such circumstances shall be conclusively presumed to have been procured through fraud and thereby fraudulently procured, and such rejection shall be null and void and of no effect.

No person interested in the business of such employer, financially or otherwise, shall be permitted to administer the oath to the affidavit required in case an employé or applicant for employment elects to exercise the right to reject the provisions of this act. And the person administering such oath in making such affidavit, shall carefully read the notice and affidavit to such person making such rejection, and shall explain that the purpose of the notice is to bar such person from recovering compensation in accordance with the schedule and terms of this act in the event that he sustains an injury in the course of such employment. All of which shall be shown by certificate of the person administering the oath herein contemplated. The Iowa industrial commissioner, or any person acting for such commissioner, shall refuse to file the notice and affidavit, unless such notice, affidavit and certificate fully, and in detail, comply with the requirements hereof. And if such rejection, affidavit and certificate is found insufficient for any cause, shall be returned by mail or otherwise to the person who executed the instrument.

§ 4. (2477-m3) **(a) Continuance of non-election.**—When the employer or employé has given notice in compliance with this act electing to reject the terms thereof such election shall continue and be in force until such employer or employé shall thereafter elect to come under the provisions of this act as is provided in sub-division (b) of this section.

(b) Waiver of rejection.—When an employer or employé rejects the terms, conditions or provisions of this act, such party may at any time thereafter elect to waive the same by giving notice in writing in the same manner required of the party in electing to reject the provisions of the act and which shall become effective when filed with the Iowa industrial commissioner.

§ 5. (2477-m4) **Employer's liability independent of employé's rejection.**—Where the employer and employé elect to reject the terms, conditions and provisions of this act, the liability of the employer shall be the same as though the employé had not rejected the terms, conditions and provisions thereof.

§ 6. (2477-m5) **Rejection after acceptance.**—An employer having come under this act, who thereafter elects to reject the terms, conditions and provisions thereof, shall not be relieved from the payment of compensation to such employé who sustains an injury in the course of the employment before the election to reject becomes effective; and in such cases the employer shall be required to secure the payment of any compensation due or that may become due to such workman, subject to the approval of the Iowa industrial commissioner.

§ 7. (2477-m6) **Third party liability.**—Where an employé coming under the provisions of this act receives an injury for which compensation is

payable under this act and which injury was caused under circumstances creating a legal liability in some person other than the employer, to pay damages in respect thereof.

(a) **Recovery of damages and compensation.**—The employé or beneficiary may take proceedings both against that person to recover damages and against the employer for compensation, but the amount of the compensation to which he is entitled under this act shall be reduced by the amount of damages recovered.

(b) **Subrogation to employé's rights.**—If the employé or beneficiary in such case recovers compensation under this act, the employer by whom the compensation was paid or the party who has been called upon to pay the compensation, shall be entitled to indemnity from the person so liable to pay damages as aforesaid, and shall be subrogated to the rights of the employé to recover therefor.

§ 8. (2477-m7) **Contracting out.**—No contract, rule, regulation or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this act except as herein provided.

§ 9. (2477-m8) **Notice or knowledge of injury—Requisites—Service.**—Unless the employer or representative of such employer shall have actual knowledge of the occurrence of an injury, or unless the employé or some one on his behalf, or some of the dependents or some one on their behalf, shall give notice thereof to the employer within fifteen days of the occurrence of the injury, then no compensation shall be paid until and from the date such notice is given or knowledge obtained; but if notice is given or the knowledge obtained within thirty days from the occurrence of the injury, no want, failure or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced by such want, defect or inaccuracy, and then only to the extent of such prejudice. Provided, that if the employé or beneficiary shall show that his failure to give prior notice was due to mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation or deceit of another or to any other reasonable cause or excuse, then compensation may be allowed, unless and then to the extent only that the employer shall show that he was prejudiced by failure to receive such notice. Provided, further, unless knowledge is obtained or notice given within ninety days after the occurrence of the injury, no compensation shall be allowed. No form of notice shall be required but may substantially conform to the following form:

FORM OF NOTICE

To _____:

You are hereby notified that on or about the _____ day of _____, 19—, personal injury was sustained by _____ while in your employ at (give name of place employed and point where located when injury occurred and that compensation will be claimed therefor.)

Signed _____.

but no variation from this form of notice shall be material if the notice is sufficient to advise the employer that a certain employé, by name, received an injury in the course of his employment on or about a specified time at or near a certain place. Notice served upon one upon whom an original notice may be served in civil cases shall be a compliance with this act.

The notice required to be given to the employer may be served by any per-

son over sixteen years of age, who shall make return upon a copy of the notice, properly sworn to, showing the date of service where and upon whom served, but no special form of the return of service of the notice shall be required. It shall be sufficient if the facts therefrom can be reasonably ascertained. The return of service may be amended at any time.

§ 10. (2477-m9) Amount of compensation—Schedule.—If any employé has not given notice to reject the terms, conditions and provisions of this act, or has given such notice and waived the same as by this act provided, and the employer has not rejected the terms, conditions and provisions of the act or has given such notice and waived the same and the employé receives a personal injury arising out of and in the course of the employment, compensation shall be paid as herein provided.

(a) The compensation provided for in this act shall be paid in accordance with the schedule unless otherwise provided.

(b) At any time after an injury and until the expiration of two weeks of incapacity, the employer, if so requested by the workman, or any one for him, or if so ordered by the court or Iowa industrial commissioner, shall furnish reasonable surgical, medical and hospital services and supplies, not exceeding one hundred (\$100.00) dollars.

(c) Where the injury causes death the compensation under this act shall be as follows:

The employer shall in addition to any other compensation pay the reasonable expense of the employé's last sickness and burial not to exceed one hundred (\$100.00) dollars. If the employé leaves no dependents this shall be the only compensation.

(d) If death results from the injury, the employer shall pay the dependents of the employé wholly dependent upon his earnings for support at the time of the injury, a weekly payment equal to fifty (50%) per cent of his average weekly wages, but not more than ten (\$10.00) dollars nor less than five (\$5.00) dollars per week for a period of three hundred (300) weeks.

(e) If the employé leaves dependents only partially dependent upon his earnings for support at the time of the injury, the weekly compensation to be paid as aforesaid shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employé to such partial dependents bear to the annual earnings of the deceased at the time of the injury. When weekly payments have been made to an injured employé before his death, the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred (300) weeks from the date of the injury.

(f) Where injury causes death to an employé, a minor, whose earnings were received by the parent, the compensation to be paid the parent shall be two-thirds (2-3) of the amount provided for payment in sub-division "D" section "10."

(g) No compensation shall be paid for an injury which does not incapacitate the employé for a period of at least two weeks from earning full wages; but if incapacity extends beyond a period of two weeks, compensation shall begin on the fifteenth day after the injury.

(h) For injury producing temporary disability, fifty (50%) per cent of the average weekly wages received at the time of injury, subject to a maximum compensation of ten (\$10.00) dollars and a minimum of five (\$5.00) dollars per

week; provided, that if at the time of injury the employé receives wages less than five (\$5.00) dollars per week, then he shall receive the full amount of wages per week. This compensation shall be paid during the period of such disability, not, however, beyond three hundred (300) weeks.

(i) For disability total in character and permanent in quality fifty (50%) per cent of the average weekly wages received at the time of the injury, subject to a maximum compensation of ten (\$10.00) dollars per week, and a minimum of five (\$5.00) dollars per week; provided, that if at the time of injury, the employé receives wages less than five (\$5.00) dollars per week, then he shall receive the full amount of wages per week.

This compensation shall be paid during the period of such disability, not however, beyond four hundred (400) weeks.

(j) For disability partial in character and permanent in quality the compensation shall be based upon the extent of such disability.

For all cases included in the following schedule compensation shall be paid as follows, to-wit:

(1) For the loss of a thumb fifty per cent (50%) of daily wages during forty weeks.

(2) For the loss of a first finger, commonly called the index finger, fifty per cent (50%) of daily wages during thirty (30) weeks.

(3) For the loss of a second finger, fifty per cent (50%) of daily wages during twenty-five (25) weeks.

(4) For the loss of a third finger, fifty per cent (50%) of daily wages during twenty (20) weeks.

(5) For the loss of a fourth finger, commonly called the little finger, fifty per cent (50%) of daily wages for fifteen (15) weeks.

(6) For the loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of one-half of such thumb or finger and compensation shall be one-half of the amounts above specified.

(7) The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

(8) For the loss of a great toe, fifty per cent (50%) of daily wages during twenty-five (25) weeks.

(9) For the loss of one of the toes other than the great toe, fifty (50%) per cent of daily wages during fifteen (15) weeks.

(10) For the loss of the first phalange of any toe, shall be considered to be equal to the loss of one-half of such toe and the compensation shall be one-half of the amount above specified.

(11) The loss of more than one phalange shall be considered as the loss of the entire toe.

(12) For the loss of a hand fifty per cent (50%) of daily wages during one hundred fifty (150) weeks.

(13) For the loss of an arm fifty per cent (50%) of daily wages during two hundred (200) weeks.

(14) For the loss of a foot fifty per cent (50%) of daily wages during one hundred twenty-five (125) weeks.

(15) For the loss of a leg, fifty per cent (50%) of daily wages during one hundred seventy-five (175) weeks.

(16) For the loss of an eye, fifty per cent (50%) of daily wages during one hundred (100) weeks.

(17) For the loss of both arms, or both hands, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability to be compensated according to provisions of clause "I" section ten, part one hereof.

(18) In all other cases in this, clause "J", the compensation shall bear such relation to the amount stated in the above schedule as the disability bears to those produced by the injuries named in the schedule. Should the employé and employer be unable to agree upon the amount of compensation to be paid in cases not specifically covered by the schedule, the amount of compensation shall be settled according to provisions of this act as in other cases of disagreement.

(19) The amounts specified in this, clause "J" and sub-divisions thereof shall be subject to the same limitations as to maximum and minimum weekly payments as are stated in clause "H" section ten hereof.

§ 11. (2477-m10) Survivability of disability compensation.—Where an employé is entitled to compensation under this act for an injury received and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability therefor shall terminate.

§ 12. (2477-m11) Medical examination.—After an injury the employé, if so requested by his employer, shall submit himself for examination at some reasonable time and place within the state and as often as may be reasonably requested, to a physician or physicians authorized to practice under the laws of this state without cost to the employé; but if the employé requests he shall, at his own cost, be entitled to have a physician or physicians of his own selection present to participate in such examination. The refusal of the employé to submit to such examination shall deprive him of the right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension.

§ 13. (2477-m12) Contributions by employés to premiums forbidden.—The compensation herein provided shall be the measure of the responsibility which the employer has assumed for injuries or death that may occur to employés in his employment subject to the provisions of this act, and it shall not be in any wise reduced by contribution from employés.

§ 14. (2477-m13) Minor or incompetent dependent—Appointment of trustee.—Where a minor dependent or one physically or mentally incapacitated from earning is entitled to compensation under this act, payment shall be made to a trustee appointed by the judge of the district court for each county in the respective judicial districts, and the money coming into the hands of the said trustee shall be expended for the use and benefit of the person entitled thereto under the direction and orders of the judge during term time or in vacation. The trustee shall make annual reports to the court of all money or property received and expended for each person, and for services rendered as trustee shall be paid such compensation by the county as the court may direct by written order directed to the auditor of the county who shall issue a warrant therefor upon the treasurer of the county in which the appointment is made. If the judge making the appointment deems it advisable, a

trustee may be appointed to serve for more than one county in the district and the expenses shall be paid ratably by each county according to the amount of work performed in each county. The trustee shall qualify and give bond in such amount as the judge may direct, which may be increased or diminished from time to time as the court may deem best.

§ 15. (2477-m14) **Commutation to lump sum.**—In any case where the period of compensation can be determined definitely either party may, upon due notice to the other, apply to any judge of the district court for the county in which the accident occurred for an order commuting future payments to a lump sum. And such judge may make such an order when it shall be shown to his satisfaction that the payment of a lump sum in lieu of future monthly or weekly payments, as the case may be, will be for the best interest of the person or persons receiving or dependent upon said compensation, or that the continuance of periodical payments will as compared with lump sum payments entail undue expense or undue hardship upon the employer liable therefor. Where the commutation is ordered, the court shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments capitalized at their present value and upon the basis of interest, calculated at 5 per cent per annum. Upon the payment of such amount the employer shall be discharged from all further liability on account of such injury or death, for which said compensation was being paid, and be entitled to a duly executed release, upon filing which the liability of such employer under any agreement, award, finding or judgment shall be discharged of record.

§ 16. (2477-m15) **Basis of compensation—Earnings, how computed.**—The basis for computing compensation provided for in this act shall be as follows:

(a) The compensation shall be computed on the basis of the annual earnings which the injured person received as salary, wages or earnings in the employment of the same employer during the year next preceding the injury.

(b) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the employé was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

(c) The annual earnings, if not otherwise determinable, shall be regarded as three hundred (300) times the average daily earnings in such computation.

(d) If the injured person has not been engaged in the employment for a full year immediately preceding the accident, the compensation shall be computed according to the annual earnings which persons of the same class in the same or in neighboring employments of the same kind have earned during such period. And if this basis of computation is impossible, or should appear to be unreasonable, three hundred (300) times the amount which the injured person earned on an average of those days when he was working during the year next preceding the accident, shall be used as a basis for the computation.

(e) In case of injured employés who earn either no wages or less than three hundred (300) times the usual daily wage or earnings of the adult day laborer in the same line of industry of that locality the yearly wage shall be reckoned as three hundred (300) times the average daily local wages of the average wage earner in that particular kind or class of work; or if informa-

tion of that class is not obtainable, then of the class or kindred or similarity in the same general employment in the same neighborhood.

(f) As to employes in employments in which it is the custom to operate for a part of the whole number of working days in each year, such number shall be used instead of three hundred (300) as a basis for computing the annual earnings, provided, the minimum number of days which shall be used for the basis of the year's work shall not be less than two hundred (200).

(g) Earnings, for the purpose of this section, shall be based on the earnings for the number of hours commonly regarded as a day's work for that employment, and shall exclude overtime earnings. The earnings shall not include any sum which the employer has been accustomed to pay the employe to cover any special expense entailed on him by the nature of his employment.

(h) In computing the compensation to be paid to any employe who, before the accident for which he claims compensation, was disabled and drawing compensation under the terms of this act, the compensation for each subsequent injury shall be apportioned according to the proportion of incapacity and disability caused by the respective injuries which he may have suffered.

§ 17. (2477-m16) Definitions.—In this act unless the context otherwise requires:

(a) "Employer" includes and applies to any person, firm, association or corporation, and includes state, counties, municipal corporations, cities under special charter and under commission form of government and shall include school districts and the legal representatives of a deceased employer. Whenever necessary to give effect to section seven of this act, it includes a principal or intermediate contractor.

(b) "Workman" is used synonymous with "employe" and means any person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship for an employer, except a person whose employment is purely casual and not for the purpose of the employer's trade or business or those engaged in clerical work only, but clerical work shall not include one who may be subjected to the hazards of the business or one holding an official position or standing in a representative capacity of the employer, or an official elected or appointed by the state, county, school district, municipal corporation, cities under special charter and commission form of government. Provided, that one who sustains the relation of contractor with any person, firm, association, corporation or the state, county, school district, municipal corporation, cities under special charter or commission form of government, shall not be considered an employe thereof.

The term "workman" shall include the singular and plural of both sexes. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents as herein defined, legal representatives or where the workman is a minor or incompetent to his guardian or next friend.

(c) The following shall be conclusively presumed to be wholly dependent upon a deceased employe:

(1) The surviving spouse, unless it be shown that the survivor wilfully deserted deceased without fault upon the part of the deceased, and if it be shown that the survivor deserted deceased without fault upon the part of

deceased, the survivor shall not be regarded as a dependent in any degree. No surviving spouse shall be entitled to the benefits of this act unless she shall have been married to the deceased at the time of the injury.

(2) A child or children under sixteen years of age (and over said age if physically or mentally incapacitated from earning) whether actually dependent for support or not upon the parent at the time of his or her death.

(3) A parent of a minor entitled to the earnings of the employé at the time when the injury occurred, subject to provisions of sub-division "F" section ten hereof.

(4) If the deceased employé leaves dependent surviving spouse, the full compensation shall be paid to such spouse; but if the dependent surviving spouse dies before payment is made in full, the balance remaining shall be paid to the person or persons wholly dependent, if any, share and share alike. If there be no person or persons wholly dependent, then payment shall be made to partial dependents.

(5) In all other cases questions of dependency in whole or in part shall be determined in accordance with the fact as the fact may be at the time of the injury; and in such other cases if there is more than one person wholly dependent, the death benefit shall be equally divided among them, and persons partially dependent, if any, shall receive no part thereof. If there is no one wholly dependent and more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency. Provided, however, that when a lump sum is paid as contemplated by this act, the court or commissioner, in making distribution thereof, shall take into consideration the contingent rights of partial beneficiaries or the rights of those who may become such after a wholly dependent child or children become sixteen years of age.

(6) Step-parents shall be regarded in this act as parents.

(7) Adopted child or children or step-child or children shall be regarded in this act the same as if issue of the body.

(d) "Injury" or "personal injury" includes death resulting from injury.

(e) The words "personal injury arising out of and in the course of such employment" shall include injuries to employés whose services are being performed on, in or about the premises which are occupied, used or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.

(f) The words "injury and personal injury" shall not include injury caused by the wilful act of a third person directed against an employé for reasons personal to such employé or because of his employment.

(g) They shall not include a disease except as it shall result from the injury.

(h) "Industrial employment" includes only employment in occupation, callings, businesses or pursuits which are carried on by the employer for the sake of pecuniary gain.

(i) The word "court" whenever used in this act unless the context shows otherwise, shall be taken to mean the district court.

§ 18. (2477-m17) Payment of premium by employé—Waiver of compensation.—(a) Any contract of employment, relief benefit or insurance or other device whereby the employé is required to pay any premium or pre-

miums for insurance against the compensation provided for in this act shall be null and void; and any employer withholding from the wages of any employé any amount for the purpose of paying any such premium shall be guilty of a misdemeanor and punishable by a fine not less than ten (\$10.00) dollars nor more than fifty (\$50.00) dollars for each offense in the discretion of the court.

No employé or beneficiary shall have power to waive any of the provisions of this act in regard to the amount of compensation which may be payable to such employé or beneficiary hereunder to whom the act applies.

§ 19. (2477-m18) Presumption of fraud in agreement.—Any contract or agreement made by any employer or his agent or attorney with any employé or any other beneficiary of any claim under the provisions of this act within twelve (12) days after the injury shall be presumed to be fraudulent.

§ 20. (2477-m19) Standards of safety.—The Iowa industrial commissioner co-operating with the employers affected by this act, or any committee or committees appointed by such employers or the Iowa industrial commissioner, shall fix standards of safety for safety appliances or places of employment, except mines under the jurisdiction of the mine inspectors.

§ 21. (2477-m20) Approval of attorney's fees.—No claim of an attorney-at-law for services in securing a recovery under this act shall be an enforceable lien thereon unless the amount of the same be approved in writing by a judge of a court of record or the Iowa industrial commissioner, which approval may be made in term time or vacation.

§ 22. (2477-m21) Interstate commerce.—The provisions of this act shall apply to employers and employés as defined in this act engaged in intra-state commerce and also those engaged in inter-state or foreign commerce for whom a rule or method of compensation has been or may be established by the congress of the United States, only to the extent that their mutual connection with intra-state work or foreign commerce shall be clearly separable and distinguishable from inter-state or foreign commerce; provided that any such employer and workman of such employer working only in this state may, subject to the approval of the Iowa industrial commissioner, and so far as not forbidden by any act of congress or permitted, voluntarily by written agreement, accept and become bound by the provisions of this act in like manner and with the same force and effect in every respect as by this act provided for other employers and employés.

PART II

§ 23. (2477-m22) Appointment of commissioner.—There is hereby created the office of Iowa industrial commissioner, to be appointed by the governor, by and with the consent of the senate. The term of office of the commissioner shall be six years. An appointment may be made to fill a vacancy or otherwise when the senate is not in session, but shall be acted upon at the next session thereof.

§ 24. (2477-m23) Remuneration—Expense account—Secretary.—The salary and actual necessary expenses of the commissioner shall be paid by the state, and he shall be provided with adequate and necessary office rooms, furniture, equipment, supplies and other necessities in the transaction of the business. The salary of the commissioner shall be three thousand

dollars (\$3,000.00) per annum. The commissioner, by and with the consent of the executive council may fix the salary and appoint a secretary and other assistants and clerical help as may be required and needed, provided, that the salary of the secretary shall not exceed fifteen hundred dollars (\$1,500.00) per annum. The salary and actual personal expense account of the commissioner shall be itemized and sworn to, and filed as other current bills as provided by statute, and warrant therefor shall be issued by the auditor upon the treasurer of the state for the payment thereof at the end of each calendar month; provided, however, that the expense account may be audited, allowed and paid at the end of each week. The commissioner shall provide himself with a seal, which shall be used to authenticate his orders, decisions and other proceedings deemed necessary, upon which shall be inscribed the words "Iowa Industrial Commissioner's Seal" and the date of organization. All other accounts made by, through or under the commissioner for salaries, expenditures, unless otherwise by this act provided, shall be itemized and sworn to by the parties entitled thereto, audited by the commissioner, attested by the secretary, filed as other bills are required by statute, and a warrant shall issue therefor by the auditor of state upon the treasurer, who shall pay the same out of the funds appropriated for the use of the commissioner as by this act provided. The salaries of all persons under the commissioner shall be audited, allowed and paid at the end of each month, and expense accounts may be audited, allowed and paid at the end of each week. The commissioner shall have the power to remove the secretary or any other person appointed to an office by him at any time the commissioner may see fit.

It shall be unlawful for any appointee by the commissioner to espouse the election or appointment of any candidate for or to any political office, or contribute to the campaign fund of any political party, or to the campaign fund of any person who is a candidate for election or appointment to any political office, and any person performing the duties as an appointee under the commissioner violating the provisions of this act shall be sufficient cause for dismissal and removal from office.

Before entering upon his duties the commissioner shall qualify by taking the oath of his office, that he will support the constitution of the United States and the state of Iowa, and will faithfully and impartially, without fraud, fear or favor, discharge the duties of his office incumbent upon him, as provided by the law of the state of Iowa, to the best of his ability and understanding.

There is hereby appropriated out of any money not otherwise appropriated for the use of the commissioner, as contemplated within the terms of this act or acts amendatory thereof, or other statutes relating to the commissioner, his duties and responsibilities empowered by law, the sum of twenty thousand dollars (\$20,000.00) annually, and in addition thereto the executive council shall provide and furnish the commissioner with such printing as may be necessary in the transaction of the business within the contemplation of law.

§ 25. (2477-m24) Summary procedure.—The commissioner may make rules and regulations not inconsistent with this act for carrying out the provisions of the act. Process and procedure under this act shall be as summary as reasonably may be. The commissioner shall have the power to subpoena witnesses, administer oaths and to examine such books and records

of the parties to a proceeding or investigation as relate to questions in dispute or under investigation. The fees for attending as a witness before the industrial commissioner shall be \$1.50 per diem; for attending before an arbitration committee \$1.00 per diem; in both cases five cents per mile for traveling to and from the place of hearing. The district court is hereby empowered to enforce by proper proceedings the provisions of this section relating to the attendance and testimony of witnesses and the examination of books and records. The commissioner shall make biennial reports to the governor who shall transmit the same to the general assembly, in which among other things, the commissioner shall recommend such changes in the law covered by this act as it may deem necessary.

§ 26. (2477-m25) Memorandum of agreement—Notice of disapproval.—If the employer and the employé reach an agreement in regard to the compensation under this act, a memorandum thereof shall be filed with the Iowa industrial commissioner by the employer or employé, and unless the commissioner shall, within twenty days, notify the employer and employé of his disapproval of the agreement by registered letter sent to their addresses as given on the memorandum filed, the agreement shall stand as approved and be enforceable [enforcible] for all purposes under the provisions of this act. Such agreement shall be approved by said commissioner only when the terms conform to the provisions of this act.

§ 27. (2477-m26) Arbitration committee.—If the employer and the injured employé or representatives or dependents fail to reach an agreement in regard to compensation under this act, either party may notify the industrial commissioner, who shall thereupon call for the formation of a committee of arbitration. The arbitration committee shall consist of three persons, one of whom shall be the industrial commissioner who shall act as chairman. The other two shall be named, respectively, by the two parties. If a vacancy occurs it shall be filled by the party whose representative is unable to act.

§ 28. (2477-m27) Oath of members.—The arbitrators appointed by the parties shall be sworn by the chairman to take the following oath:

I, ———, do solemnly swear (or affirm) that I will faithfully perform my duties as arbitrator and will not be influenced in my decision by any feeling of friendship or partiality toward either party.

(Signed) ———.

§ 29. (2477-m28) Selection of members.—It shall be the duty of the industrial commissioner, upon notification, that the parties have failed to reach an agreement, to request both parties to appoint their respective representatives on the committee of arbitration. The commissioner shall act as chairman, and, if either party does not appoint its member on this committee within seven days after notification as above provided, or after a vacancy has occurred, the commissioner shall fill the vacancy and notify the parties to that effect.

§ 30. (2477-m29) Investigation and rulings of arbitrators.—The committee on arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings of the committee shall be in the city, town or place where the injury occurred and the decision of the committee, together with the statement of evidence submitted before it, its findings of fact, rulings of law and any other matters pertinent to questions arising be-

fore it shall be filed with the industrial commissioner. Unless a claim for a review is filed by either party within five days, the decision shall be enforceable under the provisions of this act.

§ 31. (2477-m30) Medical examination.—The industrial commissioner may appoint a duly qualified impartial physician to examine the injured employé and make report. The fee for this service shall be five (\$5.00) dollars, to be paid by the industrial commissioner together with traveling expenses, but the commissioner may allow additional reasonable amounts in extraordinary cases. Any physician so examining any injured employé shall not be prohibited from testifying before the Iowa industrial commissioner or any other person, commission or court, as to the results of his examination or the condition of the injured employé.

§ 32. (2477-m31) Expenses of arbitration hearing.—The arbitrators named by or for the parties to the dispute shall each receive five (\$5.00) dollars as a fee for his services, but the industrial commissioner may allow additional reasonable amounts in extraordinary cases. The fees shall be paid by the employer who may deduct an amount equal to one-half of the sum from any compensation found due the employé. And all other costs incurred in the hearing before the board of arbitration shall be taxed to the losing party, or an equitable apportionment made thereof by the committee according to the facts.

§ 33. (2477-m32) Rehearing by industrial commissioner.—If a claim for review is filed, the industrial commissioner shall hear the parties and may hear evidence in regard to any or all matters pertinent thereto and may revise the decision of the committee in whole or in part, or may refer the matter back to the committee for further findings of fact, and shall file its decision with the records of the proceedings and notify the parties thereof. No party shall as a matter of right be entitled to a second hearing upon any question of fact.

§ 34. (2477-m33) Entering judgment in district court.—Any party in interest may present certified copy of an order or decision of the commissioner or a decision of an arbitration committee from which no claim for review has been filed within the time allowed therefor, or a memorandum of agreement approved by the commissioner, and all papers in connection therewith, to the district court of the county in which the injury occurred, whereupon said court shall render a decree in accordance therewith and notify the parties. Such decree shall have the same effect and in all proceedings in relation thereto shall thereafter be the same as though rendered in a suit duly heard and determined by said court, except that there shall be no appeal therefrom upon questions of fact or where the decree is based upon an order or decision of the commissioner which has not been presented to the court within ten days after the notice of the filing thereof by the commissioner. Upon the presentation to the court of a certified copy of a decision of the industrial commissioner, ending, diminishing or increasing a weekly payment under the provisions of this act, the court shall revoke or modify the decree to conform to such decision.

§ 35. (2477-m34) Modification and termination of payment.—(a) Any payment to be made under this act may be reviewed by the industrial commissioner at the request of the employer or of the employé, and on such review it may be ended, diminished or increased subject to the maximum

or minimum amounts provided for in this act if the commissioner finds the conditions of the employé warrants such action.

(b) Any notice to be given by the commissioner or court provided for in this act shall be in writing but service thereof shall be sufficient if registered and deposited in the mail, addressed to the last known address of the parties.

§ 36. (2477-m35) Approval of attorney's and physician's bills.—Fees of attorneys and physicians for services under this act shall be subject to the approval of the industrial commissioner unless otherwise provided in this act.

§ 37. (2477-m36) Employer's report of injury—Investigation of employer's books.—Every employer shall hereafter keep a record of all injuries, fatal or otherwise, sustained by his employés in the course of their employment. Within forty-eight hours not counting Sundays and legal holidays, after the employer has knowledge of the occurrence of an accident resulting in personal injury, a report shall be made in writing by the employer to the industrial commissioner on blanks to be procured from the commissioner for that purpose.

Upon the termination of the disability of the injured employé, or if such disability extends beyond a period of sixty days, at the expiration of such period, the employer shall make a supplemental report on blanks to be procured from the commissioner for that purpose. The said reports shall contain the name and nature of the business of the employer, the location of the establishment, the name, age, sex and occupation of the injured employé, and shall state the date and hour of the accident, the nature and cause of the injury, and such other information as may be required by the commissioner. Any employer who refuses or neglects to make the report required by this section shall be punished by a fine or not more than fifty (\$50.00) dollars for each offense.

All books, records and pay-rolls of the employers, coming under this act showing or reflecting in any way upon the amount of wage expenditure of such employers, shall always be open for inspection by the industrial commissioner, or any of his representatives presenting a certificate of authority from said commissioner for the purpose of ascertaining the correctness of the wage expenditure; the number of men employed and such other information as may be necessary for the uses and purposes of the commissioner in its administration of the law. But information obtained within the contemplation of this act shall be used for no other purpose than the information of the commissioner or insurance association with reference to the duties imposed upon such commissioner. A refusal on the part of the employer to submit his books, records or pay-rolls for the inspection of the commissioner, or his authorized representatives presenting written authority from the commissioner, shall subject the employer to a penalty of one hundred dollars (\$100.00) for each such offense to be collected by civil action in the name of the state, and paid into the state treasurer.

§ 38. (2477-m37) Removal from politics.—It shall be unlawful for the commissioner, during his term of office, to serve upon any committee of any political party or espouse the election or appointment of any person for any political office or contribute to any campaign fund of any political party, or to the campaign fund of any person who is a candidate for election or appointed to any political office. A violation of this section shall be deemed a misdemeanor and upon conviction shall be fined one hundred (\$100.00) dollars.

§ 39. (2477-m38) Conditions of candidacy.—It shall be unlawful for any person who is a candidate for the appointment as commissioner to make any promise to another, expressed or implied, in consideration of any assistance or influence given or recommendation made that the candidate will, if appointed as commissioner, vote to appoint such person or one whom he may recommend to an office within the power of the commissioner to appoint. A violation thereof shall be deemed a misdemeanor and upon conviction thereof shall be fined one hundred (\$100.00) dollars.

§ 40. (2477-m39) Recommendations of appointment.—All recommendations to the governor of any person asking the appointment of another as commissioner shall be reduced to writing signed by the person presenting the same, which shall be filed by the governor in his office and open at all reasonable times for public inspection and all recommendations made by any person to the commissioner for the appointment of another within the power of the commissioner to appoint, shall be reduced to writing, signed by the person presenting the same and filed by the commissioner and open for public inspection at all reasonable times and hours. If any person recommending the appointment of another within the contemplation of this act refuse to reduce the same to writing, it shall be the duty of the person to whom the recommendation is made, to make a brief memoranda thereof stating the name of the person recommended and the name of the person who made the same, which shall be filed as by this act in other cases provided. It shall be unlawful for the commissioner to be financially interested in any business enterprise coming under or affected by this act during his term of office and any member offending this statute, it shall be sufficient grounds for his removal from office and in such case the governor shall at once declare the office vacant and appoint another to fill the vacancy.

§ 41. (2477-m40) Grounds and method for removing commissioner.—The governor shall remove from office the commissioner on the grounds of inefficiency, neglect of duty, or malfeasance in office, upon written charges having been filed with the executive council and sustained by proofs. But written notice of such charges, together with a copy thereof, shall be served upon the accused ten (10) days before the time fixed for hearing. The executive council shall have jurisdiction to hear the case, and shall make such finding in accordance with justice and the law. The finding shall be reduced to writing, and report and finding filed with the governor.

PART III

§ 42. (2477-m41) Compulsory insurance.—Every employer, subject to the provisions of this act, shall insure his liability thereunder in some corporation, association or organization approved by the state department of insurance. Every such employer shall within thirty (30) days after this act goes into effect exhibit on demand of the state insurance department evidence of his compliance with this section. And if such employer refuses, or neglects to comply with this section, he shall be liable in case of injury to any workman in his employ under part one (1) of this act.

§ 43. (2477-m42) Employers' associations.—For the purpose of complying with the foregoing section, groups of employers by themselves or in an association with any or all of their workmen, may form insurance associa-

tions as hereafter provided, subject to such reasonable conditions and restrictions as may be fixed by the state insurance department and membership in such mutual insurance organization as approved, together with evidence of the payment of premiums due, shall be evidence of compliance with the preceding section.

§ 44. (2477-m43) Substitute schemes.—Subject to the approval of the Iowa industrial commissioner any employer or group of employers may enter into or continue an agreement with his or their workmen to provide a scheme of compensation, benefit or insurance in lieu of the compensation and insurance provided by this act; but such scheme shall in no instance provide less than the benefits here secured, nor vary the period of compensation provided for disability or for death, or the provisions of this act with respect to periodic payments, or the percentage that such payments shall bear to weekly wages, except that the sums required may be increased; provided, further, that the approval of the Iowa industrial commissioner shall be granted, if the scheme provides for contribution by workmen, only when it confers benefits in addition to those required by this act commensurate with such contributions.

§ 45. (2477-m44) Same—Approval by commissioner.—Whenever such scheme or plan is approved by the Iowa industrial commissioner, he shall issue a certificate to that effect, whereupon it shall be legal for such employer, or group of employers, to contract with any or all of his or their workmen to substitute such scheme or plan for the provisions of this act during a period of time fixed by said department.

§ 46. (2477-m45) Failure of system—Order to terminate.—Such scheme or plan may be terminated by the Iowa industrial commissioner on reasonable notice to the interested parties if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this act; but from any such order of said Iowa industrial commissioner the parties affected, whether employer or workman, may, upon the giving of proper bond to protect the interests involved appeal for equitable relief to the district court of this state.

§ 47. (2477-m46) Limitation of premium.—No insurer of any obligation under this act shall either by himself or through another, either directly or indirectly, charge or accept as a commission or compensation for placing or renewing any insurance under this act more than fifteen (15) per cent. of the premium charged.

§ 48. (2477-m47) Requisites of policy.—Every policy issued by any insurance corporation, association or organization to assure the payment of compensation under this act shall contain a clause providing that between any employer and the insurer, notice to and knowledge of the occurrence of injury or death on the part of the insured shall be notice and knowledge on the part of the insurer; and jurisdiction of the insured for the purpose of this act shall be jurisdiction of the insurer and the insurer shall be bound by every agreement, adjudgment, award or judgment rendered against the insured.

§ 49. (2477-m48) Same.—No policy of insurance issued under this act shall contain any provision relieving the insurer from payment if the insured becomes insolvent or discharged in bankruptcy during the period that the

policy is in operation, or the compensation, or any part of it, is due and unpaid. Every policy shall provide that the workmen shall have a first lien upon any amount becoming due on account of such policy to the insured from the insurer, and that in case of the legal incapacity, inability or disability of the insured to receive the amount due and pay it over to the insured workman, or his dependents, said insurer shall pay the same directly to such workman, his agent, or to a trustee for him or his dependents, to the extent of discharging any obligation of the insured to said workman or his dependents.

§ 50. (2477-m49) Release from requirement to insure.—Where an employer coming under this act furnishes proofs to the insurance department satisfactory to the insurance department and Iowa industrial commissioner, of such employer's solvency and financial ability to pay the compensation and benefits as by this act provided and to make such payments to the parties when entitled thereto, or when such employer deposits with such insurance department security satisfactory to such insurance department and the Iowa industrial commissioner as will secure the payment of such compensation, such employer shall be relieved of the provision of section forty-two (42) of this act. Provided that such employer shall from time to time, as may be required by such insurance department and Iowa industrial commissioner, furnish such additional proof of solvency and financial ability to pay as by this section of this act provided.

The insurance department and Iowa industrial commissioner may, at any time, upon reasonable notice to such employer and upon hearing, revoke for cause any order or approval theretofore made, as by this act provided and within the contemplation of this section.

§ 51. (2477-m50) Takes effect when.—Part one of this act shall take effect from and after July first, 1914, and parts two and three July fourth, 1913.

And any employer or employee who serves the notice to reject the terms of the act as by the act provided not less than thirty days before part one thereof takes effect, such notice for the purpose rejecting the terms of the act shall have the same force and effect as though part one had taken effect July fourth, 1913.

KANSAS

WORKMEN'S COMPENSATION LAW

Section

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WORKMEN'S COMPENSATION LAW

(*Sess. Laws 1911, c. 218, as Amended by Laws of 1913, c. 216, Effective March 12, 1913.*)

An Act to provide compensation for workmen injured in certain hazardous industries.

Be it enacted by the Legislature of the State of Kansas:

§ 1. **The obligation.**—If in any employment to which this act applies, personal injury by accident arising out of and in the course of employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation to the workman in accordance with this act. Save as herein provided, no such employer shall be liable for any injury for which compensation is recoverable under this act; provided, that (a) the employer shall not be liable under this act in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he is employed; (b) if it is proved that the injury to the workman results from his deliberate intention to cause such injury, or from his willful failure to use a guard or protection against accident required pursuant to any statute and provided for him, or a reasonable and proper guard and protection voluntarily furnished him by said employer, or solely from his

deliberate breach of statutory regulations affecting safety of life or limb, or from his intoxication, any compensation in respect to that injury shall be disallowed.

§ 2. [Repealed by chapter 216, Laws of 1913.]

§ 3. **Reservation of penalties.**—Nothing in this act shall affect the liability of the employer or employee to a fine or penalty under any other statute.

§ 4. **Subcontracting.**—(a) Where any person (in this section referred to as principal) undertakes to execute any work which is a part of his trade or business or which he has contracted to perform and contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed. (b) Where the principal is liable to pay compensation under this section, he shall be entitled to indemnity from any person who would have been liable to pay compensation to the workman independently of this section, and shall have a cause of action therefor. (c) Nothing in this section shall be construed as preventing a workman from recovering compensation under this act from the contractor instead of the principal. (d) This section shall not apply to any case where the accident occurred elsewhere than on or in, or about the premises on which the principal has undertaken to execute work or which are otherwise under his control or management, or on, in, or about the execution of such work under his control or management. (e) A principal contractor, when sued by a workman of a subcontractor, shall have the right to implead the subcontractor. (f) The principal contractor who pays compensation voluntarily to a workman of a subcontractor shall have the right to recover over against the subcontractor.

§ 5. **Remedies both against employer and stranger.**—Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability against some person other than the employer to pay damages in respect thereof. (a) The workman may take proceedings against that person to recover damages and against any person liable to pay compensation under this act for such compensation, but shall not be entitled to recover both damages and compensation; and (b) if the workman has recovered compensation under this act, the person by whom the compensation was paid, or any person who has been called on to indemnify him under the section of this act relating to subcontracting, shall be entitled to indemnity from the person so liable to pay damages as aforesaid, and shall be subrogated to the rights of the workman to recover damages therefor.

§ 6 (as amd.). **Application of the act.**—This act shall apply only to employment in the course of the employer's trade or business on, in, or about a railway, factory, mine or quarry, electric, building or engineering work, laundry, natural gas plant, county and municipal work, and all employments wherein a process requiring the use of any dangerous explosive or inflammable materials is carried on, which is conducted for the purpose of business, trade or

gain; each of which employments is hereby determined to be especially dangerous, in which, from the nature, conditions or means of prosecution of the work therein, extraordinary risk to the life and limb of the workman engaged therein are inherent, necessary, or substantially unavoidable, and as to each of which employments it is deemed necessary to establish a new system of compensation for injuries to workmen. This act shall not apply in any case where the accident occurred before this act takes effect, and all rights which have accrued, by reason of any such accident at the time of the publication of this act shall be saved the remedies now existing therefor, and the court shall have the same power as to them as if this act had not been enacted. Agricultural pursuits and employments incident thereto, are hereby declared to be nonhazardous, and exempt from the provisions of this act.

§ 7. **Interstate commerce.**—This act shall not be construed to apply to business or employments which, according to law, are so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged.

§ 8 (as amd.). **Number of workmen employed.**—It is hereby determined that the necessity for this law and the reason for its enactment, exist only with regard to employers who employ a considerable number of persons. This act, therefore, shall only apply to employers by whom five or more workmen have been (employed) continuously for more than one month at the time of the accident; provided, however, that employers having less than five workmen may elect to come within the provisions of this act, in which case his employees shall be included herein, as hereinafter provided; and provided further, that this act shall apply to mines without regard to number of workmen employed.

§ 9 (as amd.). **Definitions.**—In this act, unless the context otherwise requires. (a) "Railway" includes street railways and interurbans; and "employment on railways" includes work in depots, power houses, roundhouses, machine shops, yards, and upon the right of way, and in the operation of its engines, cars and trains, and to employees of express companies while running on railroad trains. (b) "Factory" means any premises wherein power is used in manufacturing, making, altering, adapting, ornamenting, finishing, repairing or renovating any article or articles for the purpose of trade or gain or of the business carried on therein, including expressly any brick yard, meat-packing house, foundry, smelter, oil refinery, lime-burning plant, steam heating plant, electric lighting plant, electric power plant and water power plant, powder plant, blast furnace, paper mill, printing plant, flour mill, glass factory, cement plant, artificial gas plant, machine or repair shop, salt plant and chemical manufacturing plant. (c) "Mine" means any opening in the earth for the purpose of extracting any minerals and all underground workings, slopes, shafts, galleries, and tunnels, and other ways, cuts and openings connected therewith, including those in the course of being opened, sunk or driven; and includes all the appurtenant structures at or about the opening of the mine, and any adjoining adjacent work place where the material from a mine is prepared for use or shipment. (d) "Quarry" means any place, not a mine, where stone, slate, clay, sand, gravel or other solid material is dug or otherwise extracted from the earth for the purpose of trade or bargain or of the employer's trade or business. (e) "Electrical work" means any kind of work in or directly connected with the construction, installation, operation, alteration, removal, or

repair of wires, cables, switchboards or apparatus, used for the transmission of electrical current. (f) "Building work" means any work in the erection, construction, extension, decoration, alteration, repair or demolition of any building or structural appurtenances. (g) "Engineering work" means any work in the construction, alteration, extension, repair or demolition of a railway (as hereinbefore defined) bridge, jetty, dike, dam, reservoir, underground conduit, sewer, oil or gas well, oil tank, gas tank, water tower, or waterworks (including standpipes or mains), any caisson work or work in artificially compressed air, any work in dredging, pile driving, moving buildings, moving safes, or in laying, repairing or removing underground pipes and connections, the erection, installing, repairing, or removing of boilers, furnaces, engines and power machinery (including belting and other connections), and any work in grading or excavating where shoring is necessary or power machinery or blasting powder, dynamite or other high explosives is in use (excluding mining and quarrying). (h) "Employer" includes any person or body of persons corporate or incorporate, and the legal representatives of a deceased employer or the receiver or trustee of a person, corporation, association or partnership. (i) "Workman" means any person who has entered into the employment of or works under contract of service or apprenticeship with an employer, but does not include a person who is employed otherwise than for the purpose of the employer's trade or business. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents, as hereinafter defined, or to his legal representative, or where he is a minor or incompetent, to his guardian. (j) "Dependents" means such members of the workman's family as were wholly or in part dependent upon the workman at the time of the accident. And "members of a family" for the purpose of this act means only widow or husband, as the case may be, and children; or if no widow, husband or children, then parents and grandparents, or if no parents or grandparents, then grandchildren; or if no grandchildren, then brothers and sisters. In the meaning of this section parents include step-parents, children include step-children and grandchildren include step-grandchildren, and brothers and sisters include step-brothers and step-sisters, and children and parents include that relation by legal adoption. (k) The words "arising out of and in the course of employment" as used in this act shall not be construed to include injuries to the employee occurring while he is on his way to assume the duties of his employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence.

§ 10. Incompetency of workman.—In case an injured workman is mentally incompetent or a minor, or where death results from the injury, in case any of his dependents as herein defined is mentally incompetent or a minor, at the time when any right, privilege or election accrues to him under this act, his guardian may, in his behalf, claim and exercise such right, privilege, or election, and no limitation of time, in this act provided for, shall run, so long as such incompetent or minor has no guardian.

§ 11. Amount of compensation.—The amount of compensation under this act shall be; (a) Where death results from injury: (1) If the workman leaves any dependents wholly dependent upon his earnings, an amount equal to three times his earnings for the preceding year, but not exceeding thirty-six hundred dollars and not less than twelve hundred dollars; provided, such earnings shall be computed upon the basis of the scale which he received or would have been entitled to receive had he been at work, during the thirty days next

preceding the accident; and, if the period of the workman's employment by the said employer had been less than one year, then the amount of his earnings during the said year shall be deemed to be fifty-two times his average weekly earnings during the period of his actual employment under said employer; provided, that the amount of any payments made under this act and any lump sum paid hereunder for such injury from which death may thereafter result shall be deducted from such sum; and provided, however, that if the workman does not leave any dependents, citizens of and residing at the time of the accident in the United States or the Dominion of Canada, the amount of compensation shall not exceed in any case seven hundred and fifty dollars. (2) If the workman does not leave any such dependents, but leaves any dependents in part dependent upon his earnings, such proportion of the amount payable under the foregoing provisions of this section, as may be agreed upon or determined to be proportionate to the injury to the said dependents; and (3) If he leaves no dependents, the reasonable expense of his medical attendance and burial, not exceeding one hundred dollars. (4) Marriage of any dependent shall terminate all compensation of such dependent, but shall not affect compensation allowed other dependents; when any minor dependent, not physically or mentally incapable of wage earning, shall become eighteen years of age, such compensation shall cease. (b) Where total incapacity for work results from injury, periodical payments during such incapacity, commencing at the end of the second week, equal to fifty per cent. of his average weekly earnings computed as provided in section 12 but in no case less than six dollars per week or more than fifteen dollars per week. (c) When partial incapacity for work results from injury, periodical payments during such incapacity, commencing at the end of the second week, shall not be less than twenty-five per cent., nor exceed fifty per cent., based upon the average weekly earnings computed as provided in section 12, but in no case less than three dollars per week or more than twelve dollars per week; provided, however, that if the workman is under twenty-one years of age at the date of the accident and the average weekly earnings are less than ten dollars his compensation shall not be less than seventy-five per cent. of his average earnings. No such payment for total or partial disability shall extend over a period exceeding eight years.

§ 12. **Rule for compensation.**—For the purposes of the provisions of this act relating to "earnings" and "average earnings" of a workman, the following rules shall be observed: (a) "Average earnings" shall be computed in such manner as is best calculated to give the average rate per week at which the workman was being remunerated for the fifty-two weeks prior to the accident. Provided, that where by reason of the shortness of time during which the workman has been in the employment of his employer, or the casual nature or the terms of the employment, it is impracticable to compute the rate of remuneration, regard shall be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person employed, by a person in the same grade employed in the same class of employment in the same district. (b) Where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his "earnings" and his "average earnings" shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident. (c)

Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by his absence of work due to illness or any other unavoidable cause. (d) Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed upon him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings. (e) In fixing the amount of the payment, allowance shall be made for any payment or benefit which the workman may receive from the employer during his period of incapacity. (f) In the case of partial incapacity the payments shall be computed to equal, as closely as possible, fifty per cent. of the difference between the amount of the "average earnings" of the workman before the accident, to be computed as herein provided, and the average amount which he is most probably able to earn in some suitable employment or business after the accident, subject, however, to the limitations hereinbefore provided.

§ 13. Payments to the injured workman.—The payments shall be made at the same time, place and in the same manner as the wages of the workman were payable at the time of the accident, but a judge of any district court having jurisdiction upon the application of either party may modify such regulation in a particular case as to him may seem just.

§ 14. Compensation to dependents.—Where death results from the injury and the dependents of the deceased workman as herein defined, have agreed to accept compensation, and the amount of such compensation and the apportionment thereof between them has been agreed to or otherwise determined, the employer may pay such compensation to them accordingly (or to an administrator if one be appointed) and thereupon be discharged from all further liability for the injury. Where only the apportionment of the agreed compensation between the dependents is not agreed to, the employer may pay the amount into any district court having jurisdiction, or to the administrator of the deceased workman, with the same effect. Where the compensation has been so paid into court or to an administrator, the proper court, upon the petition of such administrator or any of such dependents, and upon such notice and proof as it may order shall determine the distribution thereof among such dependents. Where there are no dependents, medical and funeral expenses may be paid and distributed in like manner.

§ 15. Assignability and exemption.—The payments due under this act, as well as any judgment obtained thereunder, shall not be assignable or subject to levy, execution or attachment, except for medicine, medical attention and nursing, and no claim of any attorney at law for services rendered in securing such indemnity or compensation or judgment shall be an enforceable lien thereon, unless the same has been approved in writing by the judge of the court where said case was tried; but if no trial was had, then by any judge of the district court of this state to whom such matter has been regularly submitted, on due notice to the party or parties in interest of such submission.

§ 16. Reports as to accidents and compensation.—Employers affected by this act shall report annually to the state commissioner and factory inspector such reasonable particulars in regard thereto as he may require, including particulars as to all releases of liability under this act and any other law. The penalty for failure to report or for false report shall invalidate any such release of liability.

§ 17. Medical examination.—(a) After an injury to the employees, if so requested by his employer, the employee must submit himself for examination at some reasonable time to a reputable physician selected by the employer, and from time to time thereafter during the pendency of his claim for compensation, or during the receipt by him for payment under this act, but he shall not be required to so submit himself more than once in two weeks unless in accordance with such orders as may be made by the proper court or judge thereof. Either party may upon demand require a report of any examination made by the physician of the other party upon payment of a fee of one dollar therefor. (b) If the employees request he shall be entitled to have a physician of his own selection present at the time to participate in such examinations. (c) Unless there has been a reasonable opportunity thereafter for such physician selected by the employee to participate in the examination in the presence of the physician selected by the employer, the physician selected by the employer shall not be permitted afterwards to give evidence of the condition of the employee in a dispute as to the injury. (d) Except as provided herein in this act, there shall be no other disqualification or privilege preventing the testimony of a physician who actually makes an examination.

§ 18. Medical examination by neutral physician.—In case of a dispute as to the injury, the committee, or arbitrator as hereinafter provided, or the judge of the district court, shall have the power to employ a neutral physician of good standing and ability, whose duty it shall be, at the expense of the parties, to make an examination of the injured person, as the court may direct, on the petition of either or both the employer and employee or dependents.

§ 19. Testimony by court physician.—If the employer or the employee has a physician make such an examination and no reasonable opportunity is given to the other party to have his physician make examination, then, in case of a dispute as to the injury, the physician of the party making such examination shall not give evidence before the court unless a neutral physician either has examined or then does examine the injured employee and give testimony regarding the injuries.

§ 20. Refusal of medical examination.—If the employee shall refuse examination by physician selected by the employer, with the presence of a physician of his own selection, and shall refuse an examination by the physician appointed by the court, he shall have no right to compensation during the period from refusal until he, or some one in his behalf, notifies the employer or the court that he is willing to have such examination.

§ 21. Certificate of physician.—A physician making an examination shall give to the employer and to the workman a certificate as to the condition of the workman, but such certificate shall not be competent evidence of that condition unless supported by his testimony if his testimony would have been admissible.

§ 22 (as amd.). Notice and claim.—Proceedings for the recovery of compensation under this act shall not be maintainable unless written notice of the accident, stating the time, place and particulars thereof, and the name and address of the person injured, has been given within ten days after the accident, and unless a claim for compensation has been made within three months after the accident, or in case of death, within six months from the date thereof. Such notice shall be delivered by registered mail, or by delivery to the employer. The want of or any defect in such notice or in its service shall not

be a bar unless the employer proves that he has in fact been thereby prejudiced, or if such want or defect was occasioned by mistake, physical or mental incapacity or other reasonable cause, and the failure to make a claim within the period above specified shall be a bar; provided, however, that in case of incapacity of an injured employee the limitation herein shall not run during such incapacity.

§ 23. Agreements.—Compensation due under this act may be settled by agreement. Every such agreement, other than a release, shall be in the form hereinafter provided.

§ 24. Arbitrations.—If compensation be not so settled by agreement: (a) If any committee representative of the employer and the workman exists, organized for the purpose of settling disputes under this act, the matter shall, unless either party objects by notice in writing delivered or sent by registered mail to the other party before the committee meets to consider the matter, be settled in accordance with its rules by such committee or by an arbitrator selected by it. (b) If either party so objects, or there is no such committee, or the committee or the arbitrator to whom it refers the matter fails to settle it within sixty days from the date of the claim, the matter may be settled by a single arbitrator agreed on by the parties, or appointed by any judge of a court where an action might be maintained. The consent to arbitration shall be in writing and signed by the parties and may limit the fees of the arbitrator and the time within which the award must be made. And unless such consent and the order of appointment expressly refers other questions, only the question of the amount of compensation shall be deemed to be in issue.

§ 25. The duties of arbitrator.—The arbitrator shall not be bound by technical rules of procedure or evidence, but shall give the parties reasonable opportunity to be heard and act reasonably and without partiality. He shall make and file his award, with the consent to arbitration attached, in the office of the clerk of the proper district court within the time limited in the consent, or if no time limit is fixed therein, within sixty days after his selection, and shall give notice of such filing to the parties by mail.

§ 26. Arbitrator's fees.—The arbitrator's fees shall be fixed by the consent to arbitration or be agreed to by the parties before the arbitration, and if not so fixed or agreed to, they shall not exceed \$10.00 per day, for not to exceed ten days, and disbursements for expense. The arbitrator shall tax or apportion the costs of such fees in his discretion and shall add the amount taxed or apportioned against the employer to the first payment made under the award, and he shall note the amount of his fees on the award and shall have a lien therefor on the first payments due under the award.

§ 27. Form of agreements and award.—Every agreement for compensation and every award shall be in writing, signed and acknowledged by the parties or by the arbitrator or secretary of the committee hereinbefore referred to, and shall specify the amount due and unpaid by the employer to the workman up to the date of the agreement or award, and if any, the amount of the payments thereafter to be paid by the employer to the workman and the length of time such payments shall continue.

§ 28. Filing agreements, awards, etc.—It shall be the duty of the employer to file or cause to be filed every release of liability hereunder, every agreement for or award of compensation, or modifying an agreement for or award of compensation, under this act, if not filed by the committee or arbi-

trator, to which he is a party, or a sworn copy thereof, in the office of the district court in the county in which the accident occurred within sixty days after it is made, otherwise it shall be void as against the workman. The said clerk shall accept, receipt for, and file any such release, agreement or award, without fee, and record and index it in the book kept for that purpose. Nothing herein shall be construed to prevent the workman from filing such agreement or award.

§ 29. Agreement and awards—When canceled.—At any time within one year after an agreement or award has been so filed, a judge of a district court having jurisdiction may, upon the application of either party, cancel such agreement or award, upon such terms as may be just, if it be shown to his satisfaction that the workman has returned to work and is earning approximately the same or higher wages as or than he did before the accident, or that the agreement or award has been obtained by fraud or undue influence, or that the committee or arbitrator making the award acted without authority or was guilty of serious misconduct, or that the award is grossly inadequate or grossly excessive, or if the employee absents himself so that a reasonable examination of his condition can not be made, or has departed beyond the boundaries of the United States or Canada.

§ 30. Staying proceedings upon agreement or award.—At any time after the filing of an agreement or award and before judgment has been granted thereon, the employer may stay proceedings thereon by filing in the office of the clerk of the district court wherein such agreements or award is filed: (a) A proper certificate of a qualified insurance company that the amount of the compensation to the workman is insured by it: (b) A proper bond undertaking to secure the payment of the compensation. Such certificate or bond shall first be approved by a judge of the said district court.

§ 31. Judgment upon agreement or award.—At any time after an agreement or award has been filed, the workman may apply to the said district court for judgment against the employer for a lump sum equal to eighty per cent. of the amount of payments due and unpaid and prospectively due under the agreement or award; and, unless the agreement or award be stayed, modified or canceled, or the liability thereunder be redeemed or otherwise discharged, the court shall examine the workman under oath, and if satisfied that the application is made because of doubt as to the security of his compensation, shall compute the sum and direct judgment accordingly, as if in an action; provided, that if the employer shall give a good and sufficient bond, approved by the court, no execution shall issue on such judgment so long as the employer continues to make payments in accordance with the original agreement or award undiminished by the discount.

§ 32. Review or modification of agreement or award.—An agreement or award may be modified at any time by a subsequent agreement; or, at any time after one year from the date of filing; it may be reviewed, upon the application of either party on the ground that the incapacity of the workman has subsequently increased or diminished. Such application shall be made to the said district court; and, unless the parties consent to arbitration, the court may appoint a medical practitioner to examine the workman and report to it; and upon his report and after hearing the evidence of the parties, the court may modify such agreement or award, as may be just, by ending, increasing or diminishing the compensation, subject to the limitations hereinbefore provided.

§ 33. **Redemption of liability.**—Where any payment has been continued for not less than six months the liability therefor may be redeemed by the employer by the payment to the workman of a lump sum of an amount equal to eighty per cent. of the payments which may become due according to the award, such amount to be determined by agreement, or, in default thereof, upon application, to a judge of a district court having jurisdiction. Upon paying such amount the employer shall be discharged from all further liability on account of the injury, and be entitled to a duly executed release, upon filing which or other due proof of payment the liability upon any agreement or award shall be discharged of record.

§ 34. **Insurance.**—Where the payment of compensation to the workman is insured, by a policy or policies, at the expense of the employer, the insurer shall be subrogated to the rights and duties under this act of the employer, so far as appropriate.

§ 35. **Courts.**—All references hereinbefore to a district court of the state of Kansas having jurisdiction of a civil action between the parties shall be construed as relating to the then existing code of civil procedure. Such court shall make all rules necessary and appropriate to carry out the provisions of this act.

§ 36. **Actions.**—A workman's right to compensation under this act, may, in default of agreement or arbitration, be determined and enforced by action in any court of competent jurisdiction. In every such action the right to trial by jury shall be deemed waived and the case tried by the court without a jury, unless either party, with his notice of trial, or when the case is placed upon the calendar—demand a jury trial. The judgment in the action, if in favor of the plaintiff, shall be for a lump sum equal to the amount of the payments then due and prospectively due under this act, with interest on the payments overdue, or, in the discretion of the trial judge, for periodical payments as in an award. Where death results from injury, the action shall be brought by the dependent or dependents entitled to the compensation or by the legal representative of the deceased for the benefit of the dependents as herein defined; and in such action the judgment may provide for the proportion of the award to be distributed to or between the several dependents; otherwise such proportions shall be determined by the proper probate court. An action to set aside a release or other discharge of liability on the ground of fraud or mental incompetency may be joined with an action for compensation under this act. No action or proceeding provided for in this act shall be brought or maintained outside of the state of Kansas, and notice thereof may be given by publication against non-residents of the state in the manner now provided by article 7 of chapter 95, General Statutes of Kansas of 1909 so far as the same may be applicable, and by personal service of a true copy of the first publication within twenty-one days after the date of the said first publication unless excused by the court upon proper showing that such service can not be made.

§ 37. **When the cause of action accrues.**—The cause of action shall be deemed in every case, including a case where death results from the injury, to have accrued to the injured workman at the time of the accident; and the time limited in which to commence an action for compensation therefor shall run as against him, his legal representatives and dependents from that date.

§ 38. **Attorney's liens.**—Contingent fees of attorneys for services and proceedings under this act shall in every case be subject to approval by the court.

§ 39. **Certificate required.**—If the superintendent of insurance by and with the advice and written approval of the attorney general certifies that any scheme of compensation, benefit or insurance for the workman of an employer in any employment to which this act applies, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favorable to the workmen and their dependents than the corresponding scales contained in this act, and that, where the scheme provides for contributions by the workman, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this act or their equivalents, the employer, may, while the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this act; and thereupon the employer shall be liable only in accordance with that scheme; but, save as aforesaid, this act shall not apply notwithstanding any contract to the contrary made after this act becomes a law.

§ 40. **Condition to certificate.**—No scheme shall be so certified which does not contain suitable provisions for the equitable distribution of any moneys or securities held for the purpose of the scheme, after due provision has been made to discharge the liabilities already accrued, if and when such certificate is revoked or the scheme otherwise terminated.

§ 41. **Certificate to be revocable.**—If at any time the scheme no longer fulfills the requirements of this article, or is not fairly administered, or other valid and substantial reasons therefor exist, the superintendent of insurance by and with the attorney general shall revoke the certificate and the scheme shall thereby be terminated.

§ 42. **Information to be reported.**—Where a certified scheme is in effect the employer shall answer all such inquiries and furnish all such accounts in regard thereto as may be required by the superintendent.

§ 43. **Superintendent of insurance.**—The superintendent of insurance may make all rules and regulations necessary to carry out the purposes of the four preceding sections.

§ 44 (as amd.). **Presumptive acceptance.**—All employers as defined by and entitled to come within the provisions of this act, shall be presumed to have done so unless such employer shall file with the secretary of state at Topeka, Kansas, a written statement that he elects not to accept thereunder, and thereafter any such employer desiring to change his election shall only do so by filing a written declaration thereof with the secretary of state. Notice of such election shall be forthwith posted by such employer in conspicuous places in and about his place of business.

§ 45 (as amd.). **Employé presumed to accept.**—Every employé entitled to come within the provisions of this act, shall be presumed to have done so unless such employé, shall file with the secretary of state, before injury, a written declaration that he elects not to accept thereunder and thereafter any such employé desiring to change his election shall only do so by filing a written declaration thereof with the secretary of state. Any contract wherein an employer requires of an employé as a condition of employment that he shall elect not to come within the provisions of this act shall be void.

§ 46. Abolition of defenses.—In any action to recover damages for a personal injury sustained within this state by an employé (entitled to come within the provisions of this act) while engaged in the line of his duty as such or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of due care of the employer or of any officer, agent or servant of the employer, where such employer is within the provisions hereof, it shall not be a defense to any employer (as herein in this act defined) who shall not have elected, as hereinbefore provided, to come within the provisions of this act: (a) That the employé either expressly or impliedly assumed the risk of the hazard complained of; (b) that the injury or death was caused in whole or in part by the want of due care of a fellow servant; (c) that such employé was guilty of contributory negligence but such contributory negligence of said employé shall be considered by the jury in assessing the amount of recovery.

§ 47. Defenses under Act.—In an action to recover damages for a personal injury sustained within this state by an employé (entitled to come within the provisions of this act) while engaged in the line of his duty as such or for death resulting from personal injury so sustained in which recovery is sought upon the ground of want of due care of the employer or of any officer, agent or servant of the employer, and where such employer has elected to come and is within the provisions of this act as hereinbefore provided, it shall be a defense for such employer in all cases where said employé has elected not to come within the provisions of this act: (a) That the employé either expressly or impliedly assumed the risk of the hazard complained of; (b) that the injury or death was caused in whole or in part by the want of due care of a fellow servant; (c) that said employé was guilty of contributory negligence; provided, however, that none of these defenses shall be available where the injury was caused by the willful or gross negligence of such employer, or of any managing officer, or managing agent of said employer, or where under the law existing at the time of the death or injury such defenses are not available.

§ 48. Not to affect G. S. 1909, § 6999.—Nothing in this act shall be construed to amend or repeal section 6999 of the General Statutes of Kansas of 1909, or House bill No. 240 of the Session of 1911, the same being "An act relating to the liability of common carriers by railroads to their employés in certain cases, and repealing all acts and parts of acts so far as the same are in conflict herewith."

§ 49. When effective.—This act shall take effect and be in force from and after its publication in the statute book, and the first day of January, 1912.

This act as amended to take effect and be in force on and after March 12, 1913.

KENTUCKY

WORKMEN'S COMPENSATION ACT

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WORKMEN'S COMPENSATION ACT

(S. B. No. 40, Acts 1916, c. 33, p. 354.)

An Act to provide an elective system of workmen's compensation for industrial accidents, prescribing the manner of election and the rights and liabilities of employers, employés and third parties; making provision for medical and surgical care of injured employés; establishing rates of compensation for personal injuries or death; providing methods of insuring and securing the payments of such compensation; making minors sui juris for certain purposes; creating a board to administer this act, prescribing the duties, powers and rights thereof and imposing a tax upon insurance premiums, also a tax upon employers who carry their own risk for the maintenance of such board and providing a system of appeal to the courts from the decisions of such board; prescribing certain penalties, with an emergency clause, and appropriating certain sums to meet the expenses of putting this act into effect, and repealing all laws and parts of laws in conflict herewith, to the extent of such conflict.

Be It Enacted by the General Assembly of the Commonwealth of Kentucky:

§ 1. **Application of Act—Employers.**—This act shall apply to all employers having five or more employés regularly engaged in the same occupation or business and to their employés, except that it shall not apply to domestic employment, agriculture, steam railways, or such common carriers, other than steam railways, for which a rule of liability is provided by the laws of the United States. It shall affect the liability of the employers subject thereto to their employés for personal injuries sustained by the employé by accident arising out of and in the course of his employment or for death resulting from such accidental injury; provided, however, that personal injury by accident as herein defined shall not include diseases except where the disease is the

natural and direct result of a traumatic injury by accident, nor shall they include the results of a pre-existing disease.

Any employers and employes who are, by the provisions of this section, excepted from the provisions of this act may subject themselves thereto by joint voluntary application to the board, in writing, for such period as may be stated in the application, which shall be irrevocable during such period and effective thereafter until a written revocation be filed with the board or the employment be terminated.

§ 2. Application to municipal corporations.—The term "employer" as used in this act shall be construed to include municipal corporations and any political subdivision or corporation thereof, and any election with reference to this act shall be exercised by the lawmaking or other governing body thereof; provided, however, that nothing contained in this act shall be construed as amending or repealing any statute or ordinance relating to associations or funds for the relief, pensioning, retirement or other benefit of any employes of such municipal employer, or of the widows, children or dependents of such employes, or as in any manner interfering with the same as now or hereafter established.

§ 3. Election to come under Act—Liability—Remedy by action—Waiver of compensation—Defenses.—Whereas, at the time of the injury, both employer and employé have elected to furnish or accept compensation under the provisions of this act for a personal injury, received by an employé by accident and arising out of and in the course of his employment, or for death resulting from such injury, within two years thereafter, the employer shall be liable to provide and pay compensation under the provisions of this act and shall be released from all other liability, whatsoever; provided, however, that if injury or death result to an employé through the deliberate intention of this employer to produce such injury or death, the employé or his dependent as herein defined shall receive the amount provided in this act in a lump sum to be used, if they so desire to prosecute the employer, and said dependents shall be permitted to bring suit against said employer for any amount they may desire, that if injury or death results to an employé through the deliberate intention of his employer to produce such injury or death, the employé or his dependents as herein defined shall have the privilege to take under this act, or in lieu thereof, to have a cause of action at law against such employer as if this act had not been passed for such damages so sustained by the employé, his dependents or personal representatives as may be recoverable at law. If a suit is brought under this section, all right to compensation under the provisions of this act shall thereby be waived and void as to all persons, and if a claim is made for the payment of compensation or any other benefit provided by this act, all rights to sue the employer for damages on account of such injury or death shall thereby be waived and void as to all persons.

Notwithstanding anything hereinbefore or hereafter contained no employé or dependent of any employé shall be entitled to receive compensation on account of any injury to or death of an employé caused by a wilful self-inflicted injury, wilful misconduct or intoxication of such employé.

§ 4. Medical, surgical and hospital treatment—Emergency.—In addition to all other compensation herein provided, such medical, surgical and hospital treatment, including nursing, medical and surgical supplies and appliances as may reasonably be required at the time of the injury and there-

after during disability, but not exceeding ninety days unless the board shall, by order made within that time, otherwise direct, not exceeding a total expense to the employer of more than \$100 on account of the benefits provided by this section, to cure and relieve from the effects of the injury shall be furnished by the employer, and, in case of his refusal or neglect reasonably to do so, the employer shall be liable for the reasonable expense, within the limits of this section, incurred by or on behalf of the employé in providing the same.

In the event of an emergency, the employé shall have the right to call in any available physician or surgeon to administer such first aid as may be reasonably necessary at the expense of the employer within the limits of this section.

§ 4a. Hernia.—In all claims for hernia resulting from injury received in the course of and resulting from the employé's employment, it must be definitely proved to the satisfaction of the board:

First. That there was an injury resulting in hernia.

Second. That the hernia appeared suddenly and immediately followed the injury.

Fourth. That the hernia did not exist in any degree prior to the injury for which compensation is claimed.

In all cases where liability for compensation exists, the employer shall provide competent surgical treatment by radical operation, the limits of benefits payable under section four hereof being increased to two hundred dollars in such cases, if the operation is performed. In case the injured employé refuses to submit to the operation, the employer shall have the right to a medical examination as provided in section thirty-seven hereof. If it be shown by such examination that the employé has any chronic disease or is otherwise in such physical condition so as to render it more than ordinarily unsafe to submit to such operation, he shall, if unwilling to submit to the operation, be entitled to compensation for disability under the general provisions of this act. If the examination does not disclose the existence of disease or other physical condition rendering the operation more than ordinarily unsafe and the employé, with knowledge of the result of such examination, thereafter refuses to submit to such operation, he shall be entitled to compensation for disability under the general provisions of this act for not exceeding one year.

If the employé submits to the operation, he shall, in addition to the surgical benefits herein provided for, be entitled to compensation for twenty-six weeks. If the hernia result in death within one year after it is sustained, or the operation result in death, such death shall be deemed a result of the injury causing such hernia and compensated accordingly under the provisions of this act. This paragraph shall not apply where the employé has refused to submit to an operation which has been found by the examination herein provided for, not to be more than ordinarily unsafe.

§ 5. Change of physician or treatment—Malpractice or improper treatment.—If it be shown that the employer is furnishing the requirements provided by Section four hereof in such manner that there is reasonable ground for believing that the life, health or recovery of the employé is being endangered or impaired thereby, the board may order a change in the physician or other requirement, and if the employer fail promptly to comply with such order after receiving it, may permit the employé or some one for him to

provide the same at the expense of the employer under such reasonable regulations as may be provided by the board.

No action shall be brought against any employer subject to this act by any employé or other person to recover damages for malpractice or improper treatment received by such employé from any physician, hospital or attendant thereof.

§ 6. Fees for treatment—Payment—Compensation.—All fees and charges under Sections four and five shall be fair and reasonable, shall be subject to regulation by the board and shall be limited to such charges as are reasonable for similar treatment of injured persons of a like standard of living in the same community and where such treatment is paid for by the injured person himself. In determining what fees are reasonable, the board may also consider the increased security of payment afforded by this act.

Where such requirements are furnished by a public hospital or other institution, payment thereof shall be made to the proper authorities conducting same. No compensation shall be payable for the death or disability of an employé if his death is caused, or if and in so far as his disability may be aggravated, caused or continued, by an unreasonable refusal, failure or neglect to submit to or follow any competent surgical treatment or medical aid or advice.

§ 7. Waiting period—Time of paying compensation—Interest.—Except as provided in sections four and five hereof, no compensation shall be payable for the first two weeks of disability, and all compensation shall be payable on the regular pay-day of the employer, commencing with the first regular pay-day after two weeks after the injury, with interest at the rate of 6% per annum on each installment from the time it is due until paid.

§ 8. Contract exemption—Exclusiveness of statutory remedy.—Employers who hire employés within this State to work in whole or in part without this State, may agree in writing with such employés to exempt from the operation of this act injuries received outside of this State; in the absence of such an agreement, the remedies provided by this act shall be exclusive as regards injuries received outside this State upon the same terms and conditions as if received within this State.

§ 8a. Contracting out.—No contract or agreement, written or implied, no rule, regulation or other device, shall in any manner operate to relieve any employer in whole or in part of any obligation created by this act except as herein provided.

§ 9. Injury caused by third person—Subrogation.—Whenever an injury for which compensation is payable under this act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employé may at his option either claim compensation or proceed at law by civil action against such other person to recover damages, or proceed both against the employer for compensation and such other person to recover damages, but he shall not collect from both, and if compensation is awarded under this act the employer having paid the compensation or having become liable therefor, shall have the right to recover in his own name or that of the injured employé from the other person in whom legal liability for damages exists not to exceed the indemnity paid and payable to the injured employé.

§ 10. Liability of contractor—Claim—Waiver—Premises of employer.—A principal contractor, intermediate, or sub-contractor shall be liable for

compensation to any employé injured while in the employ of any one in [of] his intermediate or sub-contractors and engaged upon the subject matter of the contract, to the same extent as the immediate employer. Any principal, intermediate or sub-contractor who shall pay compensation under the foregoing provision may recover the amount paid from any subordinate contractor through whom he may have been rendered liable under this section.

Every claim to compensation under this section shall in the first instance be presented to and instituted against the immediate employer, but such proceeding shall not constitute a waiver of the employé's rights to recover compensation under this act from the principal or intermediate contractor, provided that the collection of full compensation from one employer shall bar recovery by the employé against any others, nor shall he collect from all a total compensation in excess of the amount for which his immediate employer is liable.

This section shall apply only in cases where the injury occurred on, in or about the premises on which the principal contractor has undertaken to execute work or which are under his control otherwise or management.

§ 11. Minor employé—Lump sum—Payment to guardian.—A minor, except where employed in wilful violation of any law of this State regulating the employment of minors, shall be deemed sui juris for the purposes of this act, and no other person shall have cause of action or right to compensation for an injury to or death of such minor employé or loss of service on account thereof, by reason of the minority of such employé. In the event of the award of a lump sum of compensation to such minor employé, payment shall be made to the guardian of such minor.

§ 12. Death benefits—Dependency—Medical and burial expenses.—If death results within two years from an accident for which compensation is payable under this act, the employer or his insurer shall pay to the persons entitled to compensation, or, if none, then to the personal representative of the deceased employé reasonable burial expenses of a person of the standard of living of the deceased, not to exceed the sum of \$75, and shall also pay to or for the following persons compensation as follows, to-wit:

(1) If there are no dependents, as herein defined, there shall be paid, in addition to the burial expenses and medical expenses, if any otherwise provided for herein, the further sum of \$100, payment to be made to the personal representative of the deceased employé.

(2) If there are one or more wholly dependent persons, 65% of the average weekly earnings of the deceased employé, but not to exceed \$12 nor less than \$5 per week, shall be payable, all such payments to be made for the period between the date of death and 335 weeks after the date of accident to the employé, or until the intervening termination of dependency, but in no case to exceed the maximum sum of \$4,000.

(3) If there are partly dependent persons, the payments shall be such part of what would be payable for total dependency as the partial dependency existing at the time of the accident to the employé may be proportionate to total dependency, all such payments to be made for the period between the date of death and 335 weeks after the date of the accident to the deceased employé or until the intervening termination of dependency, but in no case to exceed in the aggregate of compensation on account of such death the maximum sum of \$4,000.

Partial dependency shall be determined by the proportion of the earnings of the employé which have been contributed to such partial dependent during one year next preceding the date of injury; if the relation of partial dependency shall not have existed for one year next preceding the date of injury, the board shall consider all the facts and circumstances and fix such proportion as may be fair and reasonable thereunder.

(4) All relations of dependency herein referred to shall be construed to mean dependency existing at the time of accident to the employé.

§ 13. Dependency—Presumption—Determination—Death or marriage of a dependent.—The following persons shall be presumed to be wholly dependent upon a deceased employé: (a) A wife upon a husband whom she has not voluntarily abandoned at the time of the accident; (b) A husband incapacitated from wage earning, upon a wife whom he has not voluntarily abandoned at the time of the accident to the wife; (c) A child or children under the age of sixteen years or over sixteen years if incapacitated from wage earning, upon the parent with whom such child or children are living or by whom actually supported at the time of the accident. In all other cases the relation of dependency in whole or in part, shall be determined in accordance with the facts of each case existing at the time of the accident, but no person shall be considered a dependent in any degree unless he be living in the household of the employé at the time of the accident or unless such person bears to the employé the relation of father, mother, husband or wife, father-in-law or mother-in-law, grandfather or grandmother, child or grandchild, or brother or sister of the whole or half blood.

Compensation to any dependent shall cease at the death or legal or common-law marriage of such dependent and upon the cessation of compensation to or on account of any person, the compensation of the remaining persons entitled to compensation shall, for the unexpired period during which their compensation is payable, be that which such persons would have received during such unexpired period if they had been the only persons entitled to compensation at the time of the accident.

§ 14. Definitions.—As used in this act, the term "child" includes step-children, legally adopted children, posthumous children and recognized illegitimate children, but does not include married children unless actually dependent.

The terms "brother" and "sister" include step-brothers, step-sisters and brothers and sisters of the half blood or by adoption, but excludes married brothers or sisters unless actually dependent. The term "grandchild" includes children of adopted children and children of step-children, but excludes step-children of children or of adopted children and married children. The term, "parent" includes step-parents and parents by adoption. The words "adopted" and "adoption" as herein used include cases where the persons are legally adopted.

§ 15. Payment—Direction of board—Deduction.—Payment of death benefits, in good faith, to a supposed dependent or to a dependent subsequent in right to another or other dependents shall protect and discharge the employer and insurer unless and until the lawful dependent or dependents prior in right shall have given the employer or insurer written notice of his or their claim. In case the employer or insurer is in doubt as to who are dependents or as to their respective rights, the board shall, on application, decide and direct to whom payment shall be made, and payment made under such direc-

tion shall release the employer and insurer from all liability; provided, however, that if an appeal be taken from the order of the board directing payment, persons receiving payment under such order shall be required to furnish bond for the protection of adverse claimants pending the outcome of the proceedings.

In case death occurs as a result of the injury, after a period of total or partial disability, the period of disability shall be deducted from the total period of compensation and the benefits paid thereunder from the maximum allowed for the death respectively stated in Section 12 hereof.

§ 16. Disability benefits—Total disability—Deduction—Permanent total disability.—Where the injury causes total disability for work, the employer, during such disability, except the first two weeks thereof, shall pay the employé so injured a weekly compensation equal to 65% of his average weekly earnings, not to exceed \$12 nor less than \$5 per week, such payments to be made during the period of total disability but not longer than eight years after the date of the injury, nor in any case to exceed the maximum sum of \$5,000. In case the period of total disability begins after the period of partial disability, the period of partial disability shall be deducted from the total period of eight years during which compensation for total disability may be payable, and the payments made on account of such partial disability shall be deducted from the maximum of \$5,000.

In case of the following injuries, the disability shall be deemed total and permanent, to-wit:

- (1) The total and permanent loss of sight in both eyes.
- (2) The loss of both feet at or above the ankle.
- (3) The loss of both hands at or above the wrist.
- (4) A similar loss of one hand and one foot.
- (5) An injury to the spine resulting in permanent and complete paralysis of both arms or both legs or of one arm and one leg.
- (6) An injury to the skull resulting in incurable insanity or imbecility.

The above enumeration is not to be taken as exclusive, but in all other cases the burden of proof shall be on the claimant to prove that his injuries have resulted in permanent total disability.

§ 17. Temporary partial disability—Ensuing total disability.—In case of an injury resulting in temporary partial disability, the employé shall receive during such disability, except the first two weeks thereof, a weekly compensation equal to 65 per cent. of the difference between his average weekly earnings before the injury and the average weekly earnings which he earns or is able to earn in some suitable employment after the injury and during such disability, not to exceed 335 weeks from the date of injury nor exceeding the sum of \$12 per week nor the maximum sum of \$4000. In case partial disability follows a period of total disability such period of total disability shall be deducted from the maximum period allowed for partial disability and the benefits paid on account thereof from the maximum allowed for partial disability.

§ 18. Schedule—Permanent partial disability.—For injuries enumerated in the following schedule, the employé shall receive in lieu of all other compensation, except such as may be payable under Sections 4 and 5 hereof, a weekly compensation equal to 65 per cent. of his average weekly earnings,

but not less than \$5 per week nor exceeding \$12 per week, for the respective periods stated thereon, to-wit:

For the loss of a thumb, 65% of the average weekly wages during 60 weeks.

For the loss of a first finger, commonly called the index finger, 65% of the average weekly wages during 45 weeks.

For the loss of a second finger, 65% of the average wages during 30 weeks.

For the loss of a third finger, 65% of the average weekly wages during 20 weeks.

For the loss of a fourth finger, commonly known as the little finger, 65% of the average weekly wages during 15 weeks.

The loss of the second, or distal phalange, of the thumb shall be considered to be equal to the loss of one-half of such thumb; the loss of more than one-half of such thumb shall be considered to be equal to the loss of the whole thumb.

The loss of the third, or distal phalange, of any finger, shall be considered to be equal to the loss of one-third of such finger.

The loss of the middle, or second phalange, of any finger, shall be considered to be equal to the loss of two-thirds of such finger.

The loss of more than the middle and distal phalanges of any finger shall be considered to be equal to the loss of the whole finger, provided, however, that in no case will the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of a metacarpel bone (bone of palm) for the corresponding thumb, finger or fingers above, add ten weeks to the number of weeks as above.

For ankylosis (total stiffness of) or contractures (due to sears or injuries) which makes the fingers more than useless, the same number of weeks apply to such finger or fingers (not thumb) as given above.

For the loss of a hand 65% of the average weekly wages during one hundred and fifty weeks.

For the loss of an arm, 65% of the average weekly wages during two hundred weeks.

For the loss of one of the toes, other than the great toe, 65% of the average weekly wages during 10 weeks.

For the loss of the great toe, 65% of the average weekly wages during 30 weeks.

The loss of more than two-thirds of any toe shall be considered equal to the loss of the whole toe.

The loss of less than two-thirds of any toe shall be considered to be equal to the loss of one-half toe. For the loss of a foot, 65% of the average weekly wages during 125 weeks.

For the loss of a leg, 65% of the average weekly wages during 200 weeks, or the total and permanent loss of the sight of an eye, 65% of the average weekly wages during one hundred weeks.

In all other cases of permanent partial disability, including any disfigurement which will impair the future usefulness or occupational opportunities of the injured employé, compensation shall be determined according to the percentage of disability, taking into account, among other things, any previous disability, the nature of the physical injury or disfigurement, the occupation of the injured employé and age at the time of injury; the compensation paid therefor shall be 65% of the average weekly earnings of the employé, but

not less than \$5 nor more than \$12, multiplied by the percentage of disability caused by the injury, for such period as the board may determine, not exceeding 335 weeks nor a maximum sum of \$4,000. Whenever the weekly payments under this paragraph would be less than \$3 per week, the period may be shortened and the payments correspondingly increased to that amount. Where compensation, except as provided in Sections four and five of this act, is paid under any other provision of this act the period during which such other compensation is paid and the amount thereof shall be deducted respectively from the maximum period and maximum amount which may be paid under this paragraph.

§ 19. Refusal of employment.—If an injured employé refuses employment reasonably suited to his capacity and physical condition procured for him, he shall not be entitled to compensation during the period of such refusal unless, in the opinion of the board, such refusal was justifiable.

§ 20. Subsequent injury.—If a previously injured employé sustains a subsequent injury which results in a condition to which both injuries, or their effects, contribute the employer in whose employment the subsequent injury is sustained shall be liable only for the compensation to which such resulting condition entitled the employé, less all compensation which the provisions of this law would have afforded an account of the prior injury or injuries had they been compensated for thereunder.

§ 21. Review by board.—Upon its own motion or upon the application of any party interested and a showing of change of conditions, mistake or fraud, the board may at any time review any award or order, ending, diminishing or increasing the compensation previously awarded, within the maximum and minimum provided in this act, or change or revoke its previous order sending immediately to the parties a copy of its subsequent order or award. Review under this section shall be had upon notice to the parties interested and shall not affect the previous order or award as to any sums already paid thereunder.

§ 22. Alien dependents.—Compensation under this act to alien dependent widows and children, not residents of the United States, shall be one-half of the amount provided in each case for residents; and the employer may at any time, commute all future installments of compensation to alien dependents the then value thereof. Alien widowers, parents, brothers and sisters, not residents of the United States, shall not be entitled to any compensation.

§ 23. Notices—Service.—Any notice required to be given under this act shall be deemed to have been properly given and served when deposited in the mail in a registered letter or package properly stamped and addressed to the person to whom notice is to be given at his last known address and in time to reach him in due time to act thereon. Notice may also be given and served in like manner as are notices in civil actions.

Any notice, given and served as provided in this section, to the consular representative of the nation of which any non-resident dependent of a deceased employé is a citizen or subject or to the authorized agent or representative of any such official residing in this State, shall be deemed to have been properly given and served upon such dependent.

§ 24. Compensation computed on wages.—Compensation shall be computed at the average weekly wage earned by employé at time of injury reckoning wages as earned, while working at full time.

(a) If the employé, at the time of the injury, is regularly employed in a higher grade of work or occupation than formerly during the year and with larger regular wages, only such higher grade of work or occupation, if the same be not seasonal, shall be taken into consideration in computing his average weekly wages.

§ 25. Deductions—Time of making payments.—Any payments made, or the value of supplies furnished by the employer or his insurer during the period of disability, to the employé or his dependents, which by the terms of this act were not due or payable when made or furnished, may, with the approval of the board, be deducted from the amount payable as compensation.

The board may, on the application of either party, in its discretion and having regard both to the welfare of the employé and the convenience and financial ability of the employer, authorize compensation to be paid monthly or quarterly.

§ 26. Commutation to a lump sum.—Whenever compensation has been paid for not less than six months thereafter, on the application of either party and upon notice to the other party, in any case where the board may determine that it will be for the best interests of either party and will not subject the employer or his insurer to an undue risk of overpayment, future payments of compensation or any part thereof may be commuted to a lump sum of an amount which will equal the total sum of the probable future payments so commuted, discounted at 5% per annum on each payment. Upon payment of such lump sum all liability for the payments therein commuted shall cease.

§ 27. Payment of lump sum.—Whenever for any reason the board may deem it expedient, any lump sum which is paid as provided in Section twenty-six hereof shall be paid to any suitable person or corporation appointed by the judge of the county court of the county of the residence of the injured employé, or of his dependents, as trustee to administer or apply the same for the benefit of the person or persons entitled thereto. The receipt of such trustee for the amount so paid to him or it shall discharge the employer and his insurer. Except as otherwise herein specifically provided, the manner of qualification and the rights, duties and liabilities of such trustee shall be determined by the general laws of this State.

§ 28. To whom death benefits paid.—The benefits in case of death shall be paid to such one or more dependents of the deceased employé, for the benefit of all the dependents entitled thereto, as may be determined by the board. The dependents to whom payments are made shall apply the same to the use of the several persons thereto entitled under this act, according to their respective claims on the deceased for support. The compensation of an insane person shall be paid to his or her committee.

In cases where the dependents are a widow, or other head of a family of minor children, and one or more minor children, it shall be sufficient for the widow or head of such family to make application for compensation on behalf of all, and in cases where the dependents are mentally incapacitated or are minors the head of whose family is not a dependent, the application may be made by the committee, guardian or next friend of such dependents.

§ 29. Violation of regulation—Effect on amount of compensation.—Where an accident is caused in any degree by the intentional failure of the employer to comply with any specific statute or lawful regulation made thereunder, communicated to such employer and relative to installation or

maintenance of safety appliances or methods, the compensation for which the employer would otherwise have been liable under this act shall be increased 15% in the amount of each payment; where the accident is caused in any degree by the intentional failure of the employé to use any safety appliance furnished by the employer, or to obey any lawful and reasonable rule, order or regulation of the board or the employer for the safety of employees or the public, the compensation for which the employer would otherwise have been liable under this act, shall be decreased 15% in the amount of each payment; provided, however, that nothing in this section shall be construed to conflict with or impair any of the provisions of Section three of this act.

§ 30. Minor employé—Waiver.—In case any minor employé who is injured or killed is, at the time of such injury, employed in wilful and known violation by the employer of any law of this State regulating the employment of minors, his statutory guardian, or personal representative of the minor so killed, may claim compensation under the terms of this act or may sue to recover damages as if this act had not been passed. If a claim to compensation be made under this section, the making of such claim shall be a waiver and bar to all rights of action on account of said injury or death of said minor as to all persons, and the institution of an action to recover damages on account of such injury or death shall be a waiver and bar of all rights to compensation under this act.

§ 31. Priority of right to compensation.—All rights of compensation granted by this act shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages for labor.

§ 32. Assignment and exemption.—No claim for compensation under this act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors.

PROCEDURE TO OBTAIN COMPENSATION

§ 33. Notice and claim—Necessity—By whom made.—No proceeding under this act for compensation for an injury or death shall be maintained unless a notice of the accident shall have been given to the employer as soon as practicable after the happening thereof, and unless a claim for compensation with respect to such injury shall have been made within one year after the date of the accident, or, in case of death, within one year after such death, whether or not a claim has been made by the employé himself for compensation. Such notice and such claim may be given or made by any person claiming to be entitled to compensation or by some one in his behalf. If payments of compensation, as such, have been made voluntarily, the making of a claim within such period shall not be required, but shall become requisite following the suspension of such voluntary payments.

§ 34. Same—Requisites.—Such notice and such claim shall be in writing, and the notice shall contain the name and address of the employé, and shall state in ordinary language the time, place of occurrence, nature and cause of the accident, with names of witnesses, the nature and extent of the injury sustained, and the work or employment in which the employé was at the time engaged, and shall be assigned by him or a person on his behalf, or, in the event of his death, by any one or more of his dependents or a person on their behalf. The notice may include the claim.

§ 35. Same—To whom given.—Any such notice or claim shall be given to the employer, or if the employer be a partnership, then to any one of the partners. If the employer be a corporation, then the notice may be given to any agent of the corporation upon whom process may be served, or to any officer of the corporation, or agent of the corporation in charge of the business at the place where the injury occurred. Such notice or claim may be given by delivery to any of such persons or in the manner provided in Section twenty-three hereof. *

§ 36. Inaccuracy in notice—Delay or failure to give.—Such notice shall not be held invalid or insufficient by reason of any inaccuracy in complying with Section thirty-four hereof, unless it be shown that the employer was in fact misled to his injury thereby. Want of notice or delay in giving notice shall not be a bar to proceedings under this act if it be shown that the employer, his agent or representative, had knowledge of the injury, or that such delay or failure to give notice was occasioned by mistake or other reasonable cause.

§ 37. Physical examination.—After an injury and so long as compensation is claimed, the workman, if so requested by his employer or the board, shall submit himself to examination, at reasonable time and places, to a duly qualified physician or surgeon designated and paid by the employer. The employé shall have the right to have a duly qualified physician or surgeon designated and paid by himself present at such examination, which right, however, shall not be construed to deny to the employer's physician or surgeon the right to visit the injured employé at all reasonable times and under all reasonable conditions. If an employé refuses to submit himself to or in any way obstruct such examination his right to take or prosecute any proceedings under this act shall be suspended until such refusal or obstruction ceases and no compensation shall be payable for the period during which said refusal or obstruction continues.

§ 38. Limitations.—No limitation of time provided in this act shall run against any person who is mentally incompetent or who is a minor dependent, so long as he has no committee, guardian or next friend.

ADMINISTRATION

§ 39. Workmen's Compensation Board.—A board is hereby created, to be known as the "Workmen's Compensation Board," which shall consist of three members appointed by the Governor. Each member of the board shall hold office for four years and until his successor shall have been appointed and qualified, except that when the board is first created, one member shall be appointed for two years, one for three years and one for four years. Thereafter, upon the expiration of the term of any member, his successor shall be appointed for a full term of four years. Of the board as first constituted, the member appointed for two years shall be chairman during his term, the member appointed for three years during the third year and the member appointed for four years during the fourth year. Thereafter, the senior member in length of service on the board in his current term in any given year shall be chairman during that year.

Vacancies on the board shall be filled by appointment for the remainder of the unexpired term, but no vacancy shall impair the rights of the remaining members to exercise all the powers of the board, nor shall relieve such mem-

bers from discharging all the duties of the board during such vacancy. In the event of a vacancy, the appointee for the unexpired term shall not succeed his predecessor in the chairmanship of the board; such other member as would, but for the vacancy, have been chairman shall at once succeed to the unexpired chairmanship, when a vacancy occurs therein, in addition to the year's chairmanship to which he would otherwise have been entitled.

§ 40. Members of board.—No person shall be eligible to appointment as a member of the board unless he shall be at least thirty years of age, a resident of Kentucky not less than three years consecutively next preceding his appointment, and of good moral character.

No person accepting appointment as a member of the board and qualifying as such shall be eligible to election or appointment to any public office during any calendar year which shall include any part of the term of membership on the board for which he may have been appointed and qualified and in which such election shall be held or appointment made. Resignation from membership on the board shall not relieve such member from any of the provisions of this section and the acceptance of appointment and qualification as a member of the board shall constitute a valid waiver of any and all statutory or constitutional rights to or eligibility for holding any other public office during such time.

§ 41. Removal of member—Proceedings.—The Governor may, at any time, remove any member of the board for inefficiency, neglect of duty, misconduct in office or political activity, or if he become ineligible as defined in Section 40, giving him in advance a copy of the charges preferred and an opportunity of being publicly heard, in person or by counsel, upon not less than ten days' notice. A representative of the Attorney General's office shall attend such proceedings, and, upon the Governor's request, shall advise or assist him therein. Either party may procure the attendance of witnesses and their testimony as is now provided by the Civil Code in ordinary actions.

If such member be removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such member and his findings thereon, together with a complete record of the proceedings had and transcript of testimony heard, the same to constitute a public record of the Commonwealth. Any member of the board may also be removed by the Senate, by impeachment under the same procedure as is now provided by law.

§ 42. Salary and expenses—Assistants.—The salary and expenses of the board with their assistants and employes shall be paid out of the maintenance fund provided for in Section 85 hereof; the annual salary of each member shall be three thousand five hundred dollars. The board may appoint a secretary at a salary of not more than twenty-five hundred dollars a year and a medical director and such other assistants and employes as are necessary to the proper administration of this act, at salaries to be fixed by the board and approved by the Governor; provided, however, that such salaries shall in no case exceed \$75 per month to any stenographer, \$100 per month to any clerical employe, \$150 per month to any other employe or assistant, or \$3,000 per year to the medical director, who shall be a reputable licensed and practicing physician and surgeon of the professional education, training or qualification required by law for admission to practice in this state. The board may at any time remove any of its appointees upon filing

with the Secretary of State a full written statement of its reasons for such removal.

§ 42a. Official oath and bond.—Members of the "Workmen's Compensation Board" shall be considered as officers, and shall take the oath prescribed by the Constitution and laws of Kentucky, and shall give bond in the sum of \$10,000 of a surety company authorized to do business in the State, for the faithful performance of their duties, which bonds shall be approved by the Governor and kept on file in the office of the Secretary of State, and any action on said bonds for breach thereof, shall be instituted by special counsel employed by the Governor and shall be in the name of the Commonwealth. The premium upon said bonds shall be paid out of the maintenance fund.

§ 42b. Traveling expenses.—The board and their employes or authorized representatives shall, for such traveling as is necessitated by the discharge of their official duties, be allowed transportation actually paid for, not exceeding the regular fare over the most direct route, and meals and lodging actually paid for, not exceeding three dollars per day.

§ 43. Offices of Board—Office supplies—Seal—Where sessions held—Actions.—The board shall keep and maintain its main offices in Frankfort, Kentucky, using suitable rooms and offices belonging to the State, and shall be provided necessary office furniture to be paid for out of the State treasury. The board shall provide necessary supplies, books, periodicals and maps and shall provide itself with a seal for the authentication of its orders, awards or proceedings, on which shall be inserted the words "Workmen's Compensation Board, State of Kentucky, Official Seal." The board may hold sessions at any place within the State where necessary and shall have power to sue or institute legal proceedings in any court of the Commonwealth, under existing laws as to jurisdiction of actions; unless consented to by the board, all actions or proceedings against it or a member thereof in his official capacity as such, shall be brought in the courts of the county of Franklin.

§ 44. Regular meetings—Called meetings—Records.—The board shall fix and adopt at least one day of the week on which regular meetings shall be held bi-weekly for the transaction of all business, a quorum of the board to be present at its main offices not later than 11:00 A. M., and remaining at the office, or available thereto, until 5:00 P. M. of such day. When necessary, the chairman shall call the board together at any time during business hours on any other day to consider and transact any business which may be before it. All proceedings of the board shall be recorded in a book for that purpose by the secretary, which shall constitute a public record and shall contain an entry of each case, claim or proceeding considered, heard or passed upon by the board or a member thereof, with the award, finding or decision made thereon.

§ 45. Districts—Residences of members.—For the purposes of this act, the State of Kentucky is hereby divided into three districts, to be known respectively as the Eastern, Central and Western Districts. The Eastern District shall contain the counties of Carroll, Gallatin, Boone, Kenton, Campbell, Owen, Grant, Pendleton, Bracken, Scott, Harrison, Robertson, Mason, Woodford, Jessamine, Fayette, Bourbon, Nicholas, Fleming, Lewis, Greenup, Boyd, Carter, Elliott, Rowan, Bath, Montgomery, Clark, Madison, Estill,

Powell, Menifee, Morgan, Lawrence, Johnson, Martin, Pike, Floyd, Knott, Letcher, Perry, Magoffin, Wolfe, Lee, Breathitt, Owsley. The Central District, the counties of Trimble, Henry, Oldham, Jefferson, Shelby, Franklin, Bullitt, Spencer, Anderson, Nelson, Washington, Mercer, Marion, Boyle, Garrard, Lincoln, Rockcastle, Green, Taylor, Adair, Casey, Russell, Pulaski, Cumberland, Clinton, Wayne, McCreary, Whitley, Laurel, Jackson, Clay, Leslie, Knox, Bell, Harlan. The Western District, the counties of Fulton, Hickman, Graves, Carlisle, Ballard, McCracken, Calloway, Marshall, Livingston, Crittenden, Lyon, Caldwell, Trigg, Christian, Hopkins, Webster, Union, Henderson, Daviess, McLean, Muhlenberg, Todd, Logan, Butler, Ohio, Hancock, Breckinridge, Meade, Hardin, Grayson, Larue, Edmonson, Hart, Warren, Barren, Metcalfe, Monroe, Allen. One member of the board, as first constituted, shall be appointed for each district, the successors of each to thereafter be appointed from such district. During his term of office, each member shall maintain his residence at some point in his district and shall adopt and maintain office hours for at least one day of the week at some point in his district, during usual business hours; the place, day and time of maintaining such office hours and the place of residence of the member shall be shown upon the official stationery used by him in his district.

§ 46. Quorum—Investigations, hearings, and decisions.—A majority of the board shall constitute a quorum for the transaction of business, and vacancies shall not impair the right of the remaining members to exercise all the powers of the full board, so long as a majority remains. Any investigation, inquiry or hearing which the board is authorized to hold or undertake may be held or undertaken by or before any one member of the board, or a referee acting for him, under authorization of the board. All investigations, inquiries, hearings and decisions of the board, and every order made by a member thereof, when approved by a majority of the members, and so shown on a record of its proceedings, shall be deemed to be the order of the board.

§ 47. Rules—Procedure—Witnesses—Procurement of evidence.—The board may make rules not inconsistent with this act for carrying out the provisions of this act. Processes and procedure under this act shall be as summary and simple as reasonably may be. The board or any member thereof shall have the power for the purpose of this act to subpoena witnesses, administer or cause to have administered oaths, and to examine or cause to have examined such parts of the books and records of the parties to a proceeding as relate to question in dispute.

The county sheriff shall serve all subpoenas of the board and shall receive the same fees as now provided by law for like service in civil actions; each witness who appears in obedience to such subpoena of the board shall receive for attendance the fees and mileage for witnesses in civil cases in the courts.

The circuit court shall, on application of the board, or any member thereof, enforce by proper proceedings, the attendance and testimony of witnesses and the production and examination of books, papers and records.

§ 48. Agreement—Voluntary payment.—If the employé and employer reach an agreement, conforming to the provisions of this act, in regard to compensation, a memorandum of the agreement shall be filed with the board, and, if approved by it, shall be enforceable in like manner as is herein provided for the enforcement of awards of the board. Nothing herein shall

prevent the voluntary payment of compensation in the amounts and for the periods herein prescribed, without formal agreement, but nothing shall operate as a final settlement except a memorandum of agreement filed with and approved by the board in accordance with this section, or the expiration of the time limit hereinbefore prescribed in Section 33.

§ 49. Hearing—Application—Date—Notice—Where held—Adjustment without hearing.—If the parties fail to reach an agreement in regard to compensation under this act, or if they have previously filed such an agreement with the board and compensation has been paid or is due in accordance therewith and the parties thereafter disagree, either party may make written application to the board for a hearing in regard to the matter at issue and for a ruling thereon. Such application for a hearing must be filed as soon as is practicable after disagreement, or after the cessation of voluntary payments, if any have been made.

As soon as possible after such application has been received the board shall set the date for a hearing, to be held as soon as is practicable in view of the matter involved, and shall notify the parties at issue of the time and place of such hearing.

Unless otherwise agreed to by the parties and authorized by the board, the hearing shall be held at or convenient to the place where the injury was sustained or the ground for disagreement occurred. In advance of directing a hearing, the board, or a member thereof, or referee authorized by the board, may confer informally with the parties at issue in an attempt to assist in adjusting their differences, but may not delay the granting of a hearing, over the objection of either party, for such purpose.

§ 50. Summary determination—Award.—The board, or any of its members, shall hear the parties at issue and their representatives and witnesses and shall determine the dispute in a summary manner. The award, together with a statement of the findings of fact, rulings of law and any other matters pertinent to the question at issue, shall be filed with the record of proceedings, and a copy of the award shall immediately be sent to the parties in dispute.

§ 51. Review by Board.—If an application for review is made to the board within seven days from the date of the award, the full board, if the first hearing was not held before the full board, shall review the evidence, or if deemed advisable, as soon as practicable, hear the parties at issue, their representatives and witnesses and shall make and award and file the same in like manner as specified in the foregoing section.

If a party introduce at a hearing before the full board a witness whose testimony at the original hearing appears in the transcript of evidence taken thereat, the costs accruing through the attendance of such witness and the transcribing of his testimony at the second hearing shall be borne by the party introducing him, at such hearing, regardless of the outcome of the controversy.

§ 52. Appeal to circuit court—Conclusiveness of award or order—Petition—Summons—Hearing—Questions reviewable—Judgment on appeal—Remand.—An award, or order of the board, as provided in Section 50, if application for review be not filed as therein provided, or an award or order of the board upon review as provided in Section 51, shall be conclusive, and binding as to all questions of fact, but either party may, within twenty

days after the rendition of such final order or award of the board may by petition appeal to the circuit court that would have jurisdiction to try an action for damages for said injuries if this Act had not passed, for the review of such order or award, the board and the adverse party being made respondents. Such petition shall state fully the grounds upon which a review is sought, assign all errors relied on and shall be verified by the petitioner, who shall furnish copies of the petition to the respondents at the time of filing same.

Summons shall issue upon the petition, directing the adverse party to file answer within fifteen days after service thereof and directing the board to certify its complete record of the case to the court, or, in lieu thereof, and if consented to by the petitioner and adverse party, an abstract of the record prepared in the same manner as hereinafter provided for appeals to the Court of Appeals.

No new or additional evidence may be introduced in the circuit court, except as to the fraud or misconduct of some person engaged in the administration of this Act, and affecting the order, ruling or award, but the court shall otherwise hear the cause upon the record or abstract thereof as certified by the board, and shall dispose of the cause in summary manner, its review being limited to determining whether or not:

1. The board acted without or in excess of its powers.
2. The order, decision or award was procured by fraud.
3. The order, decision or award is not in conformity to the provisions of this Act.
4. If, findings of fact are in issue, whether such findings of fact support the order, decision or award.

The board and each party shall have the right to appear in such review proceedings; the court shall enter judgment affirming, modifying or setting aside the order, decision or award, or in its discretion remanding the cause to the board for further proceedings in conformity with the direction of the court. The court may, in advance of judgment and upon a sufficient showing of fact, remand the cause to the board.

§ 53. Appeal to Court of Appeals—Right—Procedure—Transcript of record.—Where an amount sufficient under existing laws to authorize an appeal to the Court of Appeals is involved, the judgment of the circuit court shall be subject to appeal to the Court of Appeals, the scope of whose review shall include all matters herein made the subject of review by the circuit court and also errors of law arising in the circuit court and upon appeal made reviewable by the Civil Code of procedure where not in conflict with the provisions of this Act. The procedure as to appeal to the Court of Appeals shall be the same as in civil actions, so far as the same may be applicable to and not in conflict with the provisions of this act, except as follows:

1. Only so much of the evidence shall be embraced in a bill of exceptions as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved, and such evidence as is embraced therein shall be set forth in condensed and narrative form, save as a proper understanding of the questions presented may require that parts of it be set forth otherwise.

2. In order to carry out the provisions of sub-section 1 and further to reduce the size of the record on appeal, it shall be the duty of the appellant to

file with the clerk of the circuit court, together with proof or acknowledgment of service of a copy on the appellee or his counsel, a schedule which shall indicate the portions of the record to be incorporated into the transcript of the record on such appeal. Should the appellee or his counsel desire additional portions of the record incorporated into the record to be filed in the Court of Appeals, he may file with the clerk of the circuit court his schedule also, within ten days thereafter (unless the term be extended by order of the circuit court, or of the Court of Appeals), indicating such additional portions of the record desired by him.

The clerk of the circuit shall transmit to the Court of Appeals as the transcript of the record only those portions of the record in the lower court which are designated by the parties as above provided. The parties, or their counsel, may, however, agree by written stipulation to be filed with the clerk of the circuit court, the portions of the record which shall constitute the transcript of record on appeal, and the clerk in such case shall transmit only the papers designated in such stipulation.

§ 54. Unnecessary costs—Original papers.—If the Court of Appeals shall find that portions of the record unnecessary to a proper presentation of the case have been incorporated into the transcript by either party, the court may order that the whole or any part of the clerk's fee for preparing the transcript shall be paid by the offending party.

Whenever it shall be necessary or proper, in the opinion of the judge of the circuit court, that original papers of any kind should be inspected by the Court of Appeals, such judge may make such rule or order for the safe-keeping, transporting and return of such original papers as to him may seem proper, and the Court of Appeals will receive and consider such original papers in connection with the transcript of the record.

§ 55. Status pending appeal.—Upon motion of either party and a sufficient showing of reason or necessity therefor, the court to which an appeal is taken may continue in force the award, judgment or order appealed from, pending its decision of such appeal.

§ 56. Memorandum of agreement—Right to file—Judgment—Modification.—Any party in interest may file in the circuit court of the county in which the injury occurred a certified copy of a memorandum of agreement approved by the board or of an order or decision of the board, or of an award of the board unappealed from, or of an award of the board rendered upon an appeal, whereupon said court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though said judgment had been rendered in a suit duly heard and determined by said court.

Any such judgment of said circuit court unappealed from or affirmed on appeal or modified in obedience to the mandate of the Appellate Court, shall be modified to conform to any decision of the board, ending, diminishing or increasing any weekly payment under the provisions of Section 21 of this Act, upon a presentation to it of a certified copy of such decision.

§ 57. Costs.—If the board or any court before whom any proceedings are brought under this act shall determine that such proceedings have been brought, prosecuted or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who has so brought, prosecuted or defended them.

§ 58. Medical examination—Expenses and fees.—The board, or any member thereof, may, upon the application of either party, or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination of the employé and to testify in respect thereto. Said physician or surgeon shall be allowed traveling expenses and a reasonable fee to be fixed by the board, but not exceeding \$10 for each examination and report, but the board may allow additional reasonable amounts in extraordinary cases.

The fees and expenses of such physician or surgeon shall be paid out of the maintenance fund.

§ 59. Approval of physician's fees—Attorney's fees.—All fees of attorneys and physicians and charges of hospitals under this Act shall be subject to the approval of the board. No attorney's fees shall be allowed or approved against any party or parties not represented by such attorney, nor exceeding an amount equal to 15% of the amount of the first \$1,000 or fraction thereof recovered, or 10% of the excess of such recovery, if any, over \$1,000. The board may deny or reduce an attorney's fee upon proof of solicitation of employment.

§ 60. Questions for Board.—All questions arising under this act, if not settled by agreement of the parties interested therein, with the approval of the board, shall be determined by the board except as otherwise herein provided for.

§ 61. Records and reports of employers.—Every employer subject to this Act shall hereafter keep a record of all injuries, fatal or otherwise, received by his employés in the course of their employment. Within one week after the occurrence and knowledge thereof, as provided in Sections 33-36, of an injury to an employé, causing his absence from work for more than one day, a report thereof shall be made in writing and mailed to the board on blanks to be procured from the board for the purpose.

Upon the termination of the disability of the injured employé, or if the disability extends beyond a period of sixty days, then also at the expiration of such period, the employer shall make a supplementary report to the board on blanks to be procured from the board for the purpose.

The said report shall contain the name, nature and location of the business of the employer, and name, age, sex, wages and occupation of the injured employé, and shall state the date and hour of the accident, causing the injury, the nature and cause of the injury, and such other information as may be required by the board.

Any employer subject to this act who refuses or wilfully neglects to make the report required by this section shall be liable for a fine of not more than \$25 for each such refusal or neglect.

§ 62. Fraudulent claims.—Any person who shall knowingly file, cause to be filed, or permit to be filed, any false or fraudulent claim, on his behalf, to compensation or other benefits under this Act, or who shall by fraud, deceit or misrepresentation procure or cause to be made or shall receive any payments of compensation or other benefits under this act to which the recipient is not lawfully entitled, or shall conspire with, aid or abet another so to do, shall be guilty of a misdemeanor.

Any person who shall by deceit or misrepresentation and with intent to defraud, cause or procure or conspire with, aid or abet another in so causing

or procuring, any person entitled to compensation or other benefits under this Act to omit to title claim thereto or to accept the payment of a less sum than that to which he may be lawfully entitled to thereunder, shall be guilty of a misdemeanor.

Any person guilty of a misdemeanor as defined in this section shall, upon conviction, be punishable by a fine of not less than \$50 nor more than \$500, or imprisonment of not less than ten nor more than ninety days, in the discretion of the jury.

§ 63. Insurance—Self-insurance—Optional remedies of employé—Waiver.—Every employer under this Act shall either insure and keep insured his liability for compensation hereunder in some corporation, association or organization authorized to transact the business of workmen's compensation insurance in this State, or shall furnish to the board satisfactory proof of his financial ability to pay direct the compensation in the amount and manner and when due as provided for in this Act. In the latter case, the board shall require the deposit of an acceptable security, indemnity or bond to secure to such an extent as the board may direct, the payment of compensation liabilities as they are incurred.

Every employer accepting the provisions of this act shall at the time of such acceptance file with the board in substantially the form prescribed by it, and annually thereafter, or as often as may be necessary, evidence of his compliance with the provisions of this section and all others relating thereto. Until these provisions are complied with, the employer, shall, from the date of his acceptance of the act, be liable to an employé either for compensation under this Act or at law in the same manner as if the employer had refused to accept the provisions of this Act. Claim of compensation in such cases shall be deemed a waiver of the right to proceed at law and the institution of an action at law shall be deemed a waiver of all claim to compensation.

§ 64. Self-insurance—Certificate—Revocation—New certificate—Direct payments of compensation.—Whenever an employer has complied with the provisions of Section 63, relating to self-insurance, the board shall issue to such employer a certificate which shall remain in force for a period fixed by the board, but the board may, upon at least sixty days' notice and a hearing to the employer, revoke the certificate upon satisfactory evidence for such revocation having been presented. The board may thereafter, upon petition of the employer and a hearing, grant a new certificate, but the employer shall not, as a matter of right, be entitled to a hearing for this purpose sooner than six months after a previous revocation of his certificate.

Authorization to make payments of compensation direct may be granted either as to the employer's entire risk, or as to such part or class thereof as the board may direct in its certificate. In the latter case the board shall determine the extent to which and the manner in which the remainder of his said risk shall be insured. Any employer authorized to make payments of compensation direct, may, for his own protection, independently insure the whole or any part or character of such payments.

§ 65. Mutual insurance associations and inter-insurance exchanges—Revocation of insurer's license.—For the purposes of complying with the provisions of Section 63 groups of employers are hereby authorized to form either among themselves or with employers in other states Mutual Insurance Associations or Reciprocal or Inter-insurance Exchanges subject to the general

laws of this State relating to such Mutual Insurance Associations or Reciprocal or Inter-insurance Exchanges and such reasonable conditions and restrictions, not inconsistent therewith, as may be fixed by the board. Membership in such Mutual Insurance Associations or Reciprocal or Inter-insurance Exchanges so approved, together with evidence of the payment of premiums due, shall be evidence of compliance with Section 63.

The board shall have power in any case to require any Mutual Insurance Association or Reciprocal or Inter-insurance Exchange to purchase an annuity or to effect re-insurance with a company authorized to transact insurance in this State or to make such deposit with a bank or trust company of this State as shall in either case be approved by said board for the purpose of fully securing the payment of all deferred installments upon any claim for compensation.

Any unreasonable failure or delay in securing the payment of any deferred installments of compensation after request has been made by such board as provided in this action [section], shall, when reported to the Insurance Commissioner, constitute grounds for suspension or revocation of the insurer's license to do business in this State.

§ 66. Substitute system.—Subject to the approval of the board any employer may enter into or continue any agreement with his employé to provide a system of compensation, benefit or insurance in lieu of the compensation and insurance provided by this act. No such substitute system shall be approved unless it confers benefits upon injured employés at least equivalent to the benefits provided by this act, nor if it requires contributions from the employés, unless it confers benefits in addition to those provided under this Act at least commensurate with such contributions.

Such substitute system may be terminated by the board on reasonable notice and hearing to the interested parties if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this Act; and in this case the board shall determine upon the proper distribution of all remaining assets, if any, subject to the right of any party in interest to take an appeal to the courts.

§ 67. Insurance policies—Requisites.—All policies insuring the payment of compensation under this Act must contain a clause to the effect that as between the employer and the insurer the notice to or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this Act shall be jurisdiction of the insurer; and that the insurer shall in all things be bound by and subject to the awards, judgments or decrees rendered against such insured.

§ 68. Same.—No policy of insurance against liability for compensation arising under this act shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to same all benefits conferred by this Act, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by any default in the giving of any notice required by such policy, or otherwise. Such agreement shall be construed to be a direct promise by the insurer to person entitled to compensation enforceable in his name.

§ 69. Same—Construction—Form.—Every policy for the insurance of the compensation herein provided, against liability therefor, shall be deemed to

be made subject to the provisions of this act. No corporation, association or organization shall enter into any such policy of insurance unless its form shall have been approved by the board.

§ 70. Same—Liability covered—Designation of class.—Every policy or contract of workmen's compensation insurance under this Act, issued or delivered in this State, shall cover the entire liability of the employer for compensation under this Act to each and all of his employes covered by such policy, except as otherwise provided in Section 64 hereof, regardless of whatever other contingencies may be insured or provided for by riders attached thereto or endorsements made thereon. On the face of every such policy shall be printed conspicuously the words, "Insurance under this policy is in Class (designating the same) of the Company's Workmen's Compensation Classification Manual," and in the blank thus provided the number or other designation in said manual under which the said policy is written shall be placed before the policy is issued. If more than one class of risk be covered by the same policy, the separate risks and their corresponding manual classifications shall be stated in the same manner.

§ 71. Same—Filing of copy.—No such policy of insurance or rider to be used therewith shall be issued or delivered until a copy of the form thereof has been filed with the Commissioner of Insurance at least thirty days prior to such issue or delivery, unless before the expiration of thirty days the said Commissioner shall have approved the form thereof in writing; nor if the Commissioner of Insurance notifies the company in writing that in his opinion the form of said policy or rider does not comply with the laws of this Commonwealth, specifying fully the reasons for his opinion; provided, that upon petition of the company the decision of the said Commissioner shall be subject to review by the Franklin Circuit Court and to appeal therefrom to the Court of Appeals.

§ 72. Insurance rates.—The rates charged by all carriers of insurance, including the parties to any mutual, inter-indemnity, inter-insurance, reciprocal or other plan or scheme, writing insurance against the liability for compensation under this Act, for insurance against such liability and against the liability of employers to employes where either or both have not elected to furnish or accept compensation under this Act, shall be fair, reasonable and adequate, with due allowance for merit rating, and all risks of the same kind and degree of hazard shall be written at the same rate by the same carrier. No policy of insurance against liability for compensation under this act shall be valid until the rate thereof has been approved by the board, nor shall any such carrier of insurance write any such policy or contract until its basic and merit rating schedule have been filed with, approved and not subsequently disapproved by the board. Each such insurance carrier shall report to the board State Insurance Commissioner in accordance with such reasonable rules as the State Insurance Commissioner may at any time prescribe, for the purpose of determining the solvency of the carrier, and the adequacy of its rates; for such purposes the board or State Insurance Commissioner may inspect the books and records of such insurance carrier, and examine its officers, agents and directors under oath.

§ 73. Employer's notice of election.—Election to operate under the provisions of this Act shall be effected by the employer by filing with the board the following notice, to-wit:

"(Name of employer) elects to operate under the provisions of Chapter _____, Acts of 1916, commonly known as the Workmen's Compensation Act, this election being effective as of the day of _____ and covering (here insert name of industry, business or operation on which election is made)."

In addition to the name of each industry, business or operation as to which such election is filed, there shall also be stated in the notice with reference thereto (1) its location and address of chief office, (2) average number of employes during preceding twelve months, (3) kind of business being conducted, (4) method of securing payments of compensation to employes which the employer elects to adopt.

Such notice shall be in writing and signed by the employer, if an individual, by any partner if a partnership, or by the chief officer or agent within this State if a corporation.

§ 74. Employe's notice of election.—Election to operate under the provisions of this Act shall be effected by the employe by signing the following notice, to-wit:

"I hereby agree with (name of employer) to accept the provisions of Chapter _____, Acts of 1916, commonly known as the Kentucky Workmen's Compensation Act."

The election shall be effective from, and including, the date of signing, which shall be inserted opposite the employe's signature. In case an employe be unable to write, his mark shall be witnessed by a third person, who shall at the time read the notice to the employe. Any number of employes may sign the same notice, provided that there be conspicuously written or printed at the top of each page thereof on which signatures appear a copy of the above form of notice. If the employment be intermittent or be temporarily suspended, the original acceptance of the employe shall continue effective in subsequent employment under the same employer.

Identification of such signature or mark of the employe shall constitute conclusive proof of his election to operate under the provisions of this Act, in any hearing or proceeding in which such election may be material or in issue.

§ 75. Preservation of notice—Destruction or concealment.—All such notices of election by employes shall, when executed, be preserved by the employer during the continuation of the employment of those employes whose names are subscribed thereto. Any person who shall, with fraudulent intent, wilfully destroy, convert or secrete any such notice, or wilfully deprive the owner or his agent thereof, or erase or obliterate any part thereof, shall be guilty of a misdemeanor and upon conviction be punishable by a fine of not less than \$50 nor more than \$200, or imprisonment of not less than ten days nor more than ninety days, in the discretion of the jury.

§ 76. Withdrawal of election.—At any time after electing to operate under the provisions of this Act, either party may withdraw such election, the employer by filing written notice with the board stating the date when such withdrawal is effective and the industry, business or operation covered thereby, by personal written notice to the employe or posting in conspicuous places about such place of business not less than one week next preceding the date on which the same is to become effective copies of such notice of withdrawal; the employe desiring to withdraw such election shall file with the employer a written notice of withdrawal, stating the date when such withdrawal is to become effective. Following the filing or giving of such notices, the status of the par-

ty withdrawing shall become the same as if his former election had not been made; provided, however, that withdrawal shall not be effective as to an injury sustained less than one week after the filing thereof.

An employer, while operating under the provisions of this Act, shall at all times keep posted in conspicuous places about his place of business notices to that effect, in such form as may be prescribed by the board.

§ 76a. Non-election of employer—Action—Abolition of defenses.—Every employer affected by the provisions of this Act who does not elect to operate thereunder shall not, in any suit at law by an employé or his representative to recover damages for personal injury or death by accident arising out of and in the course of his employment, be permitted to defend any such suit at law upon any or all of the following grounds:

- (1) That the employé was guilty of contributory negligence.
- (2) That the injury was caused by the negligence of a fellow servant of the injured employé.
- (3) That the employé has assumed the risk of injury.

§ 76b. Non-election of employé—Action—Defenses.—Every employé affected by the provisions of this act who does not elect to operate thereunder, and his representative in case of death, shall, in any suit at law to recover damages for personal injury or death by accident arising out of and in the course of his employment against an employer electing to operate under the provisions of this Act, proceed at law as if this act had not been enacted, and the employer may avail himself of the defenses of contributory negligence, negligence of a fellow servant and assumption of risk as such defenses now exist at common law.

§ 77. Agreement of employé to pay premium.—No agreement by any employé to pay any portion of the insurance premium paid by his employer shall be valid, and any employer who deducts any portion of such premium from the wages or salary of any employé entitled to the benefits of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$100, for each offense.

§ 78. Enforcement of Act.—Upon the request of the board, the Attorney General, or, under his direction, the Commonwealth's Attorney or County Attorney of any county, shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of this Act, arising within the county or counties of their respective jurisdictions, and shall defend in like manner all suits, actions or proceedings brought against the board or the members thereof in their official capacity.

§ 79. Free distribution of blank forms and literature.—The board shall prepare and furnish, free of charge, blank forms and provide its rules for their distribution, so that the same may be readily available, of all notices, claims, reports, proofs and other blank forms and literature which it may deem proper and requisite to the efficient administration of this Act. It may authorize the publication and distribution of such blanks by employers and their insurers in manner and form provided by it.

§ 80. Annual report of Board.—Annually on or before the 15th day of December the board shall make a report to the Governor for the preceding fiscal year, which shall include a statement of the number of awards made and of claims rejected by it, a general statement of the causes of accident leading to the injuries for which awards were made or rejected claims based, and a

detailed statement of the disbursements from, and unpaid expenses chargeable against, the maintenance fund and its condition, together with any other information which the board deems proper to call to the attention of the Governor, including any recommendations it may have to make, and it shall be the duty of the board to publish and distribute among employers and employes such general information as to the business transacted by the department as may be useful and necessary; provided, however, that an abuse of such right to so publish and distribute information shall constitute political activity within the meaning of Section 41 hereof.

The annual report shall not exceed five hundred copies. All printing of the department shall be done by the contractor or contractors for public printing, subject to such provisions of the general laws governing public printing as may be applicable thereto, and shall be paid for out of any funds in the State treasury not otherwise appropriated.

§ 81. When Act effective—Prior election.—This act shall become effective on the first day of August, 1916, except as to Sections 39 to 47, hereof, both inclusive, relating to the appointment of the board and their rights, powers and duties, an emergency is declared to exist, and the same shall become effective on the first day of April, 1916.

Elections by employers and employes and contracts of insurance entered into in conformity with the provisions of this Act, between April 1st, 1916, and August 1st, 1916, to become effective on or after August 1st, 1916, shall be valid and enforceable.

§ 82. Appropriation—Claims.—For the purpose of paying the salaries and expenses of the board and its necessary employes in making preparation and putting this Act into operation the sum of \$7,500 is hereby appropriated, payable out of any funds in the State treasury not otherwise appropriated. All claims for salaries or expenses, when approved by resolution of the board, and countersigned by the chairman thereof, shall be presented to the Auditor of Public Accounts, who shall issue his warrant in payment thereof. All such claims shall show to whom and for what service, material or other things or reason such amounts are to be paid and shall be accompanied by voucher checks or receipts covering the same except as to items of less than \$1.00.

§ 83. Administrative fund.—For the purpose of paying the salaries and necessary expenses of the board and its assistants and employes in administering and carrying out the provisions of this Act an administrative fund shall be created and maintained in the following manner:

(1) Every person, partnership, association, corporation, whether organized under the laws of this or any other state or country, company, mutual company or association, the parties to any inter-indemnity contract or reciprocal plan or scheme, and every other insurance carrier, insuring employers in this state against liability for personal injuries to their employes, or death caused thereby, under the provisions of this Act, shall, as hereinafter provided, pay a tax upon the premiums received, whether in cash or notes, in this State or on account of business done in this State, for such insurance in this State, at the rate of 4 per cent. of the amount of such premiums, which tax shall be in lieu of all other taxes on such premiums, which tax shall be assessed and collected as hereinafter provided. Provided, however, that such insurance carriers shall be credited with all cancelled or returned premiums actually refunded during the year on such insurance, and with premiums, on re-insurance with com-

panies authorized and licensed to transact business in Kentucky, which re-insurance shall be reported by the re-insurer; but no credit shall be allowed for re-insurance in companies not licensed to transact business in Kentucky.

(2) Every such insurance carrier shall, for the six months ending October 31st, 1916, for the eight months ending June 30th, 1917, and annually thereafter, make a return verified by the affidavit of its president and secretary, or other chief officers or agents, to the Commissioner of Insurance, stating the amount of all such premiums and credits during the period covered by such return. Every insurance carrier required to make such return shall file the same with the Commissioner of Insurance within thirty days after the close of the period covered thereby and shall at the same time pay into the State treasury a tax of \$4 on each \$100 of such premium ascertained as provided in subsection 1 hereof, less returned premiums on cancelled policies and re-insurance with other companies licensed to transact business in this State, and upon payment file a statement with the Secretary of State. Upon receiving such payments the State Treasurer shall place the whole thereof to the credit of the fund for the administration of this Act.

(3) If any such insurance carrier shall fail or refuse to make the return required by this Act, the said Commissioner of Insurance shall assess the tax against such insurance carrier at the rate herein provided for, on such amount of premiums as he may deem just, and the proceedings thereon shall be the same as if the return had been made.

(4) If any such insurance carrier shall withdraw from business in this State before the tax shall fall due, as herein provided, or shall fail or neglect to pay such tax, the Commissioner of Insurance shall at once proceed to collect the same, and he is hereby empowered and authorized to employ such legal process as may be necessary for that purpose, and when so collected he shall pay the same into the State treasury. The suit may be brought by the Commissioner of Insurance, in his official capacity, in any court of this State having jurisdiction; reasonable attorney's fees may be taxed as costs therein, and process may issue to any county of the State, and may be served as in civil actions, or in cases of unincorporated associations, partnerships, inter-indemnity contracts or other plan or scheme, upon the principal agent of the parties thereto.

(5) Any person or persons who shall in this State act or assume to act as agent for any such insurance carrier whose authority to do business in this State has been suspended, while such suspension remains in force, or shall neglect or refuse to comply with any of the provisions of this section obligatory upon such persons or party, or who shall wilfully make a false or fraudulent statement of the business or condition of any such insurance carrier or false or fraudulent return as herein provided, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$100 nor more than \$1,000, or by imprisonment for not less than ten nor more than ninety days, or both such fine and imprisonment, in the discretion of the jury.

(6) Whenever by this Act any officer is required to give any notice to an insurance carrier, the same may be given by delivery, or by mailing by registered letter properly addressed and stamped, to the principal office or chief agent of such insurance carrier within this State, or to its home office, or to the secretary, general agent or chief officer thereof in the United States.

(7) Any insurance carrier liable to pay a tax upon premiums under this Act

shall not be liable to pay any other or further tax upon such premiums, or on account thereof, under any other law of this State.

(8) Every employer carrying his own risk under the provisions of Section 63 shall, under oath, report to the board his pay roll subject to the provisions of this Act. Such report shall be made in form prescribed by the board and at the times herein provided for premium reports by insurer. The board shall assess against such pay roll a maintenance fund tax computed by taking 4 per cent. of the basic premiums chargeable against the same or most similar industry or business, taken from the manual insurance rates for compensation then in force in this State.

(9) The board shall not be authorized to incur expenses or indebtedness during any period, chargeable against the maintenance fund, in excess of the premium tax payable to such fund for the same period. If it be ascertained that the tax collected for a given period exceeds the total expense chargeable against the maintenance fund under the provisions of this act, the board may authorize a corresponding credit upon collections for the succeeding period.

KENTUCKY EMPLOYÉS' INSURANCE ASSOCIATION

§ 84. **Creation of association.**—For the purpose of carrying out the provisions of this act, and of affording to employers a method of insuring their liability as required thereby, the Kentucky Employés Insurance Association is hereby created a body corporate with the powers provided herein and with all the general corporate powers incident thereto.

§ 85. **Directors.**—The Board of Directors of the Association shall consist of 15 members thereof, three of whom shall be appointed by the Governor, and 12 of whom shall be elected by ballot of the subscribers, in accordance with Section 207 of the Constitution. Of the original directors appointed by the Governor, one shall be appointed for one year, one for two years, and one for three years; annually thereafter one director shall be appointed for a term of three years. Election of directors by the subscribers shall be held at such times and in such manner as the by-laws shall provide.

§ 86. **First meeting of subscribers.**—The appointed directors shall, within thirty days of the subscription of twenty-five employers, call the first meeting of the subscribers by a notice in writing mailed to each subscriber at his place of business not less than ten days before the date fixed for the meeting.

§ 87. **Directors—By-laws.**—At the first meeting of the subscribers the remaining twelve directors shall be elected. The board of directors may thereafter exercise power as such and may adopt by-laws not inconsistent with the provisions of this Act.

§ 88. **Officers.**—The board of directors shall annually choose by ballot a president, who shall be a member of the board, a secretary, a treasurer, and such other officers as the by-laws shall provide.

§ 89. **Directors—Quorum—Vacancies.**—Seven or more of the directors shall constitute a quorum for the transaction of business.

Vacancies in any office may be filled in such manner as the by-laws shall provide.

§ 90. **Subscribers.**—Any employer in the Commonwealth may become a subscriber.

§ 91. **Votes of subscribers.**—In any meeting of the subscribers each subscriber shall be entitled to one vote, and if a subscriber has 250 employés to

whom the association is bound to pay compensation he shall be entitled to two votes, and he shall be entitled to one additional vote for each additional 250 employes to whom the association is bound to pay compensation, but no subscriber shall cast by his own right or by the right of proxy, more than 10 votes.

§ 92. Number of subscribers.—No policy shall be issued by the association until [not] less than fifty employers have subscribed who have not less than five thousand employes to whom the association may be bound to pay compensation.

§ 93. List of subscribers.—No policy shall be issued until a list of the subscribers, with the number of employes of each, together with such other information as the Insurance Commissioner may require, shall have been filed at the insurance department, nor until the president and secretary of the association shall have certified under oath that every subscription in the list so filed is genuine and made with an agreement by every subscriber that he will take the policies subscribed for by him, within thirty days of the granting of a license to the association by the Insurance Commissioner to issue policies.

§ 94. Grouping of subscribers—Premiums.—The board of directors shall distribute the subscribers into groups in accordance with the nature of the business and the degree of the risk of injury.

Subscribers within each group shall annually pay in cash, or notes absolutely payable, such premiums as may be required to pay the compensation herein provided for the injuries which may occur in that year.

§ 95. Contingent mutual liability.—The association may in its by-laws and policies fix the contingent mutual liability of the subscribers for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a subscriber shall not be less than an amount equal to and in addition to the cash premium.

§ 96. Assessments.—If the association is not possessed of cash funds above its unearned premiums sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the subscriber liable to assessment therefor in proportion to their several liability.

Every subscriber shall pay his proportional part of any assessments which may be laid by the association, in accordance with law and his contract, on account of injuries sustained and expenses incurred while he is a subscriber.

§ 97. Dividends.—The board of directors may, from time to time, by vote, fix and determine the amount to be paid as a dividend upon policies expiring during each year after retaining sufficient sums to pay all the compensation which may be payable on account of injuries sustained and expenses incurred.

All premiums, assessments and dividends shall be fixed by and for groups as heretofore provided in accordance with the experience of each group, but all the funds of the association and the contingent liability of all the subscribers shall be available for the payment of any claim against the association.

§ 98. When premium, assessment or dividend effective.—Any proposed premium, assessment, dividend or distribution of subscribers shall be filed with the insurance department and shall not take effect until approved by Insurance Commissioner after such investigation as he may deem necessary.

§ 99. Prevention of injuries.—The board of directors shall make and enforce reasonable rules and regulations for the prevention of injuries on the premises of subscribers, and for this purpose the inspectors of the association shall have free access to all such premises during regular working hours.

Any subscriber or employé aggrieved by any such rule or regulation may petition the Workmen's Compensation Board for a review and it may affirm, amend or annul the rule or regulation.

§ 100. Perjury.—If any officer of the association shall falsely make oath to any certificate required to be filed with the Insurance Commissioner, he shall be guilty of perjury.

ACT IN GENERAL

§ 101. When effective—Existing actions.—This act shall not affect any causes of action existing or action pending on August 1, 1916, and, its application as between employer and employé, except as otherwise herein provided, shall date from and include August 1, 1916.

§ 102. Construction and validity.—The rule of law requiring strict construction of statutes in derogation of the common law shall not be applicable to the provisions of this Act. If any section or part thereof shall be held invalid, such partial invalidity shall not affect the Act as a whole or any other section or part thereof.

LOUISIANA

BURKE-ROBERTS EMPLOYERS' LIABILITY ACT

Section

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BURKE-ROBERTS EMPLOYERS' LIABILITY ACT

(Act No. 20 of 1914; H. B. No. 150; Acts Reg. Sess. 1914, p. 44, as amended.)

An Act prescribing the liability of an employer to make compensation for injuries received by an employee in performing services arising out of and incidental to his employment in the course of his employer's trade, business or occupation in certain trades, business and occupations, abolishing in certain cases the defenses of assumption of risk, contributory negligence and negligence of a fellow servant in actions for personal injury and death, establishing a schedule of compensation, regulating procedure for the determination of liability and compensation thereunder and providing for methods for payments of compensation thereunder.

§ 1. **Application of Act.**—Be it enacted by the General Assembly of the State of Louisiana, That this act shall apply only to the following:

1. Employés.—Every person in the service of the State, or of any parish, township, incorporated village or city, or other political subdivision, or incorporated public board or commission in this State authorized by law to hold property and to sue and be sued, under any appointment or contract of hire, express or implied, oral or written, except an official of the State, or of any parish, township, incorporated village or city, or other political subdivision, or incorporated public board or commission in this State authorized by law to hold property and to sue and be sued; and for such employee and employer the payment of compensation, according to and under the terms, conditions and provisions hereinafter set out in this act, shall be exclusive, compulsory and obligatory; provided that one employed by a contractor who has contracted with the State, parish, township, incorporated village or city, or other political subdivision, or incorporated public board or commission in the State, through its proper representative, shall not be considered an employee of the State, parish, township, incorporated village or city, or other political subdivision, or incorporated public board or commission.

2. Hazardous employments.—Every person performing services arising out of and incidental to his employment in the course of his employer's trade, business or occupation in the following hazardous trades, businesses and occupations:

(a) The operation, construction, repair, removal, maintenance and demolition of railways and railroads, vessels, boats, and other water crafts, terminal docks, street railways, factories, mills, including rice mills, cotton oil mills, saw mills, shingle mills, planing mills and syrup mills, power laundries, power bakeries, foundries, forges, smelters, blast furnaces, machine shops, coke burning plants, lime burning plants, bleaching works, dyeing works, potteries, phosphate and sulphur works, rendering works, slaughter houses, meat packing plants, ice plants, warehouses, marble or stone cutting or polishing plants, ship building and ship repairing plants and yards, mines, mining plants, quarries, oil, gas, sulphur, salt or other wells, heating plants, lighting plants, power plants, water works, pumping works, coal yards, lumber yards, building material yards, derricks, bridges, junk yards, malt houses, breweries, freight or passenger elevators, stock yards, harvesting machinery, threshing machine, cotton gins, cotton compresses, sugar houses, sugar and other refineries, sash and door factories, wood-working establishments, printing and photo-engraving establishments, book binding and general press work, skidders, engineering works. Rigging or coaling of vessels, or loading or unloading the cargoes of vessels, logging and lumbering, storing ice, paving with asphalt or other molten material, excavating or grading with power machinery, or with the use of an explosive, working in compressed air, dredging, pile driving, boring, moving safes, chimney sweeping. The construction, installation, operation, alteration, removal or repair of wires, cables, switch-boards or apparatus charged with electrical current. Work in any of the building or metal trades in the erection, construction, extension, decoration, alteration, repair or demolition of any building or structural appurtenances. Any occupation entailing the manufacture, transportation, care of, use of, or regular proximity to dangerous quantities of gunpowder, dynamite, nitro-glycerine and other like dangerous explosives. The installation, repair, erection, removal or operation of boilers, furnaces, engines and other forms of machinery.

"Factory" means any premises wherein mechanical power is used in manu-

facturing, making, altering, adapting, ornamenting, finishing, repairing or renovating any article or articles for the purpose of trade or gain, or of the business carried on therein.

"Mine" means any opening into and beneath the surface of the earth for the purpose of extracting any mineral or minerals, and all underground workings, slopes, shafts, galleries and tunnels, and other ways, cuts and openings connected therewith, including those in the course of being opened, sunk or driven; and includes also the appurtenant structures at or about the openings of a mine and any adjoining work-place where the material from a mine is stored or prepared for use or shipment.

"Quarry" means any place, not a mine, including a bank or pit, where shell, stone, slate, clay, sand, gravel or other material is dug or otherwise extracted from the earth or ground for the purpose of trade or barter or of the employer's trade or business; and includes also the appurtenant structures at or about the openings of a quarry and any adjoining work-place where the material from a quarry is stored or prepared for use or shipment.

"Railways" and "Railroads" also includes work in or about depots, power-houses, round houses, cars, locomotives and all other appurtenances, and in private yards, terminals, switches, etc., and work on railroads for express companies.

3. Other hazardous employments.—If there be or arise any hazardous trade, business or occupation or work other than these hereinabove enumerated, it shall come under the provisions of this act. The question of whether or not a trade, business or occupation not named herein is hazardous may be determined by agreement between the employer and employee or by submission at the instance of either employer or employee to the Judge of the Court which shall have jurisdiction over the employer in a civil case. The decision of the Court shall not be retroactive in its effect.

4. Inclusion by contract.—An employer and any employee in a trade, business or occupation not specified in paragraph 2 of this Section and any one engaged in a trade, business or occupation that may not be determined to be hazardous under the operation of paragraph 3 of this Section, may, prior to the accident, voluntarily contract in writing to come under the benefit and protection of the provisions of this act with the same force and effect as though they had been specifically included instead of omitted.

§ 2. Compensation provided.—1. Be it further enacted, etc., That if a workman employed as hereinabove set forth in paragraph 1 of Section 1 (except a workman who shall be eliminated from the benefit of this act for the causes and reasons set forth in Section 28 of this act) receives personal injury by accident arising out of and in the course of such employment his employer shall pay compensation in the amounts and to the person or persons hereinafter specified.

§ 3. Election.—1. **Necessity of election—Exclusive remedy.**—Be it further enacted, etc., That this act, except Sections 4 and 5, relating to defenses, shall not apply to any employer or employee engaged in the trades, businesses and occupations specified in paragraph 2 of Section 1, nor to those that may be determined to be hazardous under the operation of paragraph 3 of Section 1, unless prior to the injury they shall have so elected by agreement, either express or implied, as hereinafter provided. Such an agreement shall be a surrender by the parties thereto of their rights to any other method,

form, or amount of compensation or determination thereof than as provided in this act, and shall bind the employee himself, his widow and relations and dependants as hereinafter defined, as well as the employer and those conducting his business during bankruptcy and insolvency.

2. Notice of non-election—Existing contracts.—Every contract of hiring, verbal, written or implied between an employer and any employee engaged in the trades, business or occupations specified in paragraph 2 of Section 1, or engaged in the trades, businesses or occupations that may be determined to be hazardous under the operation of paragraph 3 of Section 1, now in operation or made or implied prior to the time fixed for this act to take effect shall after this act takes effect be presumed to continue subject to the provisions of this act unless either party shall at any time not less than thirty days prior to the accident, in writing, notify the other party to such contract that the provisions of this act other than Sections 4 and 5 are not intended to apply.

3. Same—Subsequent contracts.—Every contract of hiring, verbal, written or implied, between any employer or employee engaged in the trades, businesses or occupations specified in paragraph 2 of Section 1, or engaged in the trades, businesses or occupations that may be determined to be hazardous under the operation of paragraph 3 of Section 1, made subsequent to the time provided for this act to take effect, shall be presumed to have been made subject to the provisions of this act, unless there be as a part of said contract an express statement in writing not less than thirty days prior to the accident, either in the contract itself or by written notice by either party to the other, that the provisions of this act other than Sections 4 and 5 are not intended to apply, and it shall be presumed that the parties have elected to be subject to the provisions of this act and to be bound thereby.

4. Election of minors.—Any workman of the age of eighteen and upwards engaged in the trades, businesses or occupations specified in paragraph 2 of Section 1, or engaged in the trades, businesses or occupations that may be determined to be hazardous under the operation of paragraph 3 of Section 1, shall himself exercise the election hereby authorized; the right of election hereby authorized shall be exercised on behalf of any workman under the age of eighteen by his parent or guardian: Provided, that this act shall not apply to workmen of less than the minimum age prescribed by law for the employment of minors in the trades, businesses or occupations specified in paragraph 2 of Section 1, or engaged in the trades, businesses or occupations that may be determined to be hazardous under the operation of paragraph 3 of Section 1.

5. Termination of agreement.—The agreement between any employer or employee engaged in the trades, businesses or occupations specified in paragraph 2 of Section 1, or engaged in the trades, businesses or occupations that may be determined to be hazardous under the operation of paragraph 3 of Section 1, for the operation of the provisions of this act other than Sections 4 and 5 may be terminated by either party upon thirty days' written notice prior to the accident.

6. Notice to minors.—Where the notice is to be served upon one who is under the age of eighteen years, said notice must be served upon the parent, tutor or guardian of the said individual under the age of eighteen years.

§ 4. Abolition of defenses—Presumption of negligence.—1. Be it further enacted, etc., That if an employee has elected as aforesaid to come under

this act and his employer has elected as aforesaid not to come under this act, then if an action is brought by the employee or relation or personal representative to recover for personal injuries sustained after such election by the employer arising out of and in the course of his employment, it shall not be a defense.

(a) That the employee assumed the risks inherent in or incidental to or arising out of his employment, or the risks arising from the failure of the employer to provide and maintain a reasonably safe place to work or arising from the failure of the employer to furnish reasonably safe tools and appliances, or that the employer exercised reasonable care in selecting reasonably competent employees in the trade, business or occupation.

(b) That the injury was caused by the negligence of a fellow employee.

(c) That the employee was negligent.

2. In an action by an employee against an employer for personal injury sustained arising out of and in the course of the employment where the employer has elected to reject the provisions of this act, it shall be presumed that the injury to the employee was the direct result and arose out of the negligence of the employer; and that such negligence was the proximate cause of the injury, and in such case the burden of proof shall rest upon the employer to rebut the presumption of negligence.

§ 5. Defenses of employer—Waiver of non-election.—1. Be it further enacted, etc., That if an employer has elected as aforesaid to come under this act and his employee has elected as aforesaid not to come under this act, then if an action is brought by the employee to recover damages for personal injury sustained after the employee has so elected, and arising out of and in the course of his employment the employer shall have all the defenses which he would have had if this act had not been enacted.

2. An employee who has given notice to his employer in writing as aforesaid that he elects not to be subject to the provisions of this act, may waive such election by a notice in writing, which shall take effect immediately.

§ 6. Principal, contractor and sub-contractor.—1. Be it further enacted, etc., That where any person (in this section referred to as principal) undertakes to execute any work, which is a part of his trade, business or occupation or which he has contracted to perform, and contracts with any other person (in this section referred to as contractor) for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this act, reference to the principal shall be substituted for reference to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

2. Where the principal is liable to pay compensation under this section, he shall be entitled to indemnity from any person who would have been liable to pay compensation to the workman independently of this section, and shall have a cause of action therefor.

3. Nothing in this section shall be construed as preventing a workman from recovering compensation under this act from the contractor instead of from the principal.

4. A principal contractor, when sued by a workman of a subcontractor, shall have the right to call in that subcontractor or any intermediate contractor or contractors as defendant or co-defendant.

§ 7. Third party liability—Election of employé—Subrogation.—1. Be it further enacted, etc., That when an injury for which compensation is payable under this act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employee may, at his option, either claim compensation under this act or obtain damages from or proceed at law against such other person to recover damages; and if compensation is claimed and awarded under this act any employer having paid the compensation or having become liable therefor shall be subrogated to the rights of the injured employee to recover against that person, and may compromise the claim therefor in his discretion; provided, if the employer shall recover from such other person damages in excess of the compensation already paid or awarded to be paid under this act then any such excess shall be paid to the injured employee less the employer's legitimate and reasonable expenses and costs of the action, which payment shall be credited upon the balance of compensation, if any, that may become due thereafter.

§ 8 (as amended by Act No. 243 of 1916). Compensation schedule.—1. Be it further enacted, etc., That compensation shall be paid under this act in accordance with the following schedule of payments:

(a) For injury producing temporary total disability to do work of any reasonable character, fifty per centum of wages, subject to a maximum compensation of Ten Dollars per week and a minimum compensation of Three Dollars per week: Provided, that, if at the time of the injury the employee was receiving wages of Three Dollars or less per week, then the compensation shall be full wages per week. This compensation shall be paid during the period of disability not, however, beyond three hundred weeks.

(b) For injury producing temporary partial disability, the compensation shall be fifty per centum of the difference between the wages of the employee before the injury and the wages which he is able to earn thereafter, but not more than Ten Dollars a week for a period not exceeding three hundred weeks, compensation to cease whenever employee is able to earn as much as he did before the accident.

(c) For injury producing permanent partial disability, the compensation shall be one-half of the difference between the wages of the injured employee before the injury and the wages which he is able to earn thereafter subject to a maximum of Ten Dollars per week, to be paid for the period of disability not exceeding three hundred weeks.

(d) In cases included by the following schedule the compensation shall be as follows:

For the loss of a thumb, fifty per centum of wages during fifty weeks.

For the loss of a first finger, commonly called the index finger, fifty per centum of wages during thirty weeks.

For the loss of any other finger, or a great toe, fifty per centum of wages during twenty weeks.

For the loss, by separation, of any toe other than the great toe, fifty per centum of wages during ten weeks.

The loss of the first phalanx of the thumb, or of two phalanges of any finger or toe, shall be considered to be equal to the loss of one-half of such member, and the compensation shall be one-half of the amount above specified.

The loss of more than one phalanx of the thumb or more than two phalanges of any finger or toe shall be considered as the loss of the entire member; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand, or the amount received for the loss of more than one toe exceed the amount provided in this schedule for the loss of a foot.

For the loss of a hand, fifty per centum of wages during one hundred and fifty weeks.

For the loss of one arm, fifty per centum of wages during two hundred weeks.

For the loss of a foot, fifty per centum of wages during one hundred and twenty-five weeks.

For the loss of a leg, fifty per centum of wages during one hundred and seventy-five weeks.

For the loss of an eye, fifty per centum of wages during one hundred weeks.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or one hand and one foot, shall constitute total and permanent disability to be compensated according to the provisions of clause (e) of this section.

Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be equivalent to the loss of a foot.

In cases not falling within any of the provisions already made, where the employé is seriously permanently disfigured about the face or head or where the usefulness of a member or any physical function is seriously permanently impaired, the court of proper jurisdiction as hereinafter provided may allow such compensation as is reasonable in proportion to the compensation hereinabove specifically provided in the cases of specific disabilities above named, not to exceed fifty per centum of wages during one hundred weeks.

The amounts specified in this sub-section are all subject to the same limitations as to maximum and minimum as are stated in clause (a) of this section.

(e) For injury producing permanent total disability to do work of any character the compensation shall be fifty per centum of wages, but not more than Ten Dollars nor less than Three Dollars per week for the period of disability not exceeding four hundred weeks.

(f) For injury causing death within one year after the accident, compensation shall be computed on the following basis, subject to a maximum of Ten Dollars per week and a minimum of Three Dollars per week, and shall be paid for a period of three hundred weeks, to the following persons:

(1) To the widow or widower alone if there be no children, twenty-five per centum of wages of the deceased.

(2) To the widow or widower if there be one child, for the joint benefit of the widow or widower and child, forty per centum of wages of the deceased.

(3) To the widow or widower if there be two or more children, for the joint benefit of such widow or widower and children, fifty per centum of wages of the deceased.

(4) If one child alone and no widow or widower, then to such child twenty-five per centum of wages of the deceased.

(5) If two children and no widow or widower, then to such children forty per centum of wages of the deceased.

(6) If three or more children and no widow or widower, then to such children fifty per centum of the wages of the deceased.

(7) If there be no widow nor widower nor any child, then to the father or mother of the deceased, if dependent on the deceased to any extent for support at the time of the accident, twenty-five per centum of the wages of the deceased; if in such event both the father and the mother of the deceased survive and were dependent to any extent for support at the time of the accident, fifty per centum of the wages of the deceased to the two of them.

(8) If there be neither widow nor widower nor child nor dependent parent surviving the deceased entitled to compensation, then to the brothers and sisters and other members of the family of the deceased not hereinabove specifically provided for (if such brother or sister or other member of the family not otherwise specifically provided for was actually dependent on the deceased for support to any extent at the time of the accident), twenty-five per centum of the wages of the deceased for one brother or sister or other dependent member of the family not otherwise provided for, and ten per centum additional for each additional brother or sister or other dependent member of the family not otherwise provided for, and ten per centum additional for each additional brother or sister or other dependent member of the family, subject to a maximum of fifty per centum of the wages of the deceased.

(9) Whenever under this schedule compensation is due to several persons in the same class, it shall be equally divided among them; and where the aggregate of such compensation would exceed fifty per centum of wages were the maximum limit not imposed, the compensation due each individual shall be abated proportionately so as to bring the total compensation within the limit.

(10) Where there is a surviving widow or widower and a child or children entitled to compensation, the compensation above described shall be paid entirely to the widow or widower for the common benefit of such widow or widower and the child or children, and the appointment of a guardian or tutor shall not be necessary. Where there is no surviving parent, payment shall be made to the duly appointed guardian.

(11) In all cases provided for in this schedule the relation or dependency must exist at the time of the injury.

(12) Compensation shall be payable under this schedule to or on account of any child or brother or sister or other dependent member of the family not otherwise specifically provided for, only if and while such child, brother, sister, or other dependent member of the family not otherwise specifically provided for is under the age of eighteen years (unless such child, brother, sister or other dependent member of the family is mentally or physically incapacitated from earning a living). No compensation shall be payable under this section to a widow unless she is living with her deceased husband at the time of his death, or was then actually dependent upon him for support. No compensation shall be payable under this section to a widower unless he be incapable of self-support at the time of his wife's decease and be at such time dependent upon her for support. The term "child" and

"children" shall cover only legitimate children or acknowledged illegitimate children, but shall include step-children and adopted children if members of the decedent's family at the time of his death, and shall also include posthumous children. The terms "brother" and "sister" shall include step-brother and step-sisters and brothers and sisters by adoption. Should any dependent of a deceased employee die, or should the widow or widower remarry, or should the widower become capable of self-support, or should any dependent not physically or mentally incapacitated from earning pass beyond the age of eighteen years, the payments of the portion of the compensation theretofore due such dependent or widow or widower shall cease. If the compensation payable under this section to any person shall, for any cause, cease, the compensation to the remaining persons entitled hereunder shall thereafter be the same for the unexpired part of the period during which their compensation is payable as would have been payable to them had they been the only persons entitled to compensation at the time of the death of the deceased.

(13) When weekly payments have been made to an employee before his death, the compensation or dependent as provided for in this section shall begin on the date of the last of such payments, and shall not continue for more than three hundred weeks from the date of the injury.

(14) In every case of death, the employer shall pay or cause to be paid the reasonable expenses of the last sickness and burial of the employee, not exceeding one hundred dollars.

2. Wages.—The term "wages" as used in this Act is defined to mean the daily rate of pay at which the service rendered is recompensed under the contract to hire in force at the time of accident.

3. Waiting period.—No compensation shall be paid for the first week after the injury is received, nor in any case unless the employer is notified thereof within the period specified in Section 11: Provided, however, that in cases where disability from injury continue for six weeks or longer after the injury is received, then after six weeks have elapsed compensation for the first week shall be paid.

4. Medical, surgical and hospital service.—The employer shall in every case furnish the employee reasonable medical, surgical and hospital service and medicines not to exceed one hundred and fifty dollars in value, unless the employee refuses to allow them to be furnished by the employer.

5. Voluntary payments.—Any voluntary payments made by the employer or his insurer to the injured workmen, during the period of his disability, or to his dependents, which, by the terms of this act, were not due and payable when paid, may, subject to the approval of the Court, be deducted from the amount to be paid as compensation; provided that in case of disability, such deduction shall be made by shortening the period during which compensation shall be paid, and not by reducing the amount of the weekly payments.

6. Time of payment.—Payments of compensation under this act shall be paid as near as may be at the same times and places as wages were payable to the injured employé before the accident; but a longer interval may be substituted by agreement, with the approval of the Court.

7. Commutation to lump sum.—The amounts payable periodically as compensation may be commuted to a lump sum payment at any time by agreement of the parties, subject to the approval of the Court; and upon the

payment of such lump sum the liability of the employer making such payment under this act shall be fully satisfied.

§ 9. Medical examination.—1. Provided by employer.—Be it further enacted, etc., That an injured workman shall submit himself to examination by a duly qualified medical practitioner provided and paid for by the employer, as soon after the accident as demanded, and from time to time thereafter, as often as may be reasonably necessary and at reasonable hours and places, during the pendency of his claim for compensation or during the receipt by him of payments under this act.

2. Report of examination.—It shall be the duty of the employer to cause such examination, provided for in paragraph 1 of this Section to be made of the injured workman, immediately after knowledge or notice of the accident and to serve a copy of the report by his medical practitioner of such examination upon the workmen within six days after such examination. If no such examination be made and report furnished by the employer within that time, the workman shall furnish a report of an examination made by his medical practitioner to the employer, for which the employee shall be entitled to receive from the employer the sum of One Dollar. Upon the receipt by either party of such a report from the other party, the party receiving it, if he disputes such report or any statement therein, shall notify the other party of that fact within six days, otherwise such report shall be prima facie evidence of the facts therein stated in subsequent proceedings under this act.

3. Ordered by judge.—If there be any dispute thereafter as to the condition of the workman, the Judge of the Court which would have jurisdiction in a civil case, or, where there is more than one Judge of said Court, then either or any of said Judges of said Court, upon application of either party, shall order an examination of the workman to be made by a medical practitioner appointed by the Court. The fees of such examiner shall be fixed by the Court at not to exceed Ten Dollars, and shall be paid in advance by the applicant. Such medical examiner shall report his conclusions from such examination to the Court, and such report shall be prima facie evidence of the facts therein stated in any subsequent proceedings under this act.

§ 10. Refusal of examination.—1. Be it further enacted, etc., That if the workman refuses to submit himself to a medical examination as provided in Section 9, or in any wise obstructs the same, his right to compensation and to take or prosecute any further proceedings under this act shall be suspended until such examinations take place. And, when a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

§ 11 (as amended by Act No. 243 of 1916). Notice of injury.—1. Be it further enacted, etc., That no proceeding under this act for compensation shall be maintained unless notice of the injury shall be given to the employer within six months after the day of injury or death. Such notice may be given or made by any person claiming to be entitled to compensation, or by someone in his behalf.

§ 12. Alternative limitation—Posted notice.—1. Be it further enacted, etc., That it shall be the duty of the employer to cause to have printed and to keep posted at some convenient and conspicuous point about the place of business a notice reading substantially as follows: "In case of accidental

injury or death the injured employee or some one acting in his behalf, must give notice to (here shall follow the name and address of the party) within fifteen days, and unless notice be given to the above party within fifteen days, no payments will be made under the law for such injury or death." In the event of the failure of the employer to keep posted said notice, the time in which notice of the injury shall be given as provided in Section 11 shall be extended to six months from the date of injury.

§ 13. Requisites of notice.—1. Be it further enacted, etc., That the notice and claim provided for in Section 11 shall be made in writing and such notice shall contain the name and address of the employee, and shall state in ordinary language the time, place, nature and cause of the injury, and shall be signed by him or by a person on his behalf, or, in the event of death, by any one or more of his dependents or by a person on their behalf. The notice may include the claim.

§ 14. Service of notice.—1. Be it further enacted, etc., That any notice or claim under this act shall be given to the employer, or, if the employer be a partnership, then to any one of the partners. If the employer be a corporation, then the notice may be given to any agent of the corporation upon whom process may be served, or to any officer of the corporation, or any agent in charge of the business at the place where the injury occurred. If the employer be a body politic then the notice may be given to the individual connected with said body politic upon whom process may be served. Provided, however, that in any case notice of accident may be given to the person designated in the notice posted in accordance with Section 12. Such notice shall be given by delivering it or sending it by mail by registered letter addressed to the employer of his or its hereinabove designated officer or agent at his or its last known residence or place of business.

§ 15. Inaccurate or delayed notice.—1. Be it further enacted, etc., That a notice given under the provisions of Section 11 of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the time place, nature or cause of the injury, or otherwise, unless it is shown that the employer was in fact misled to his injury thereby. Want of notice or delay in giving notice shall not be a bar to proceedings under this act if it be shown that the employer, or his agent or representative, had knowledge of the accident, or that the employer has not been prejudiced by such delay or want of notice.

§ 16. 1. Minor or incompetent workmen.—Be it further enacted, etc., That in case an injured workman is mentally incompetent or a minor, or where death results from the injury, in case any of his dependents as herein defined is mentally incompetent or a minor, at the time when any right, privilege or election accrues to him under this act, his duly qualified curator or tutor, as the case may be, may, in his behalf, claim and exercise such right, privilege or election, and no limitation of time, in this act provided for, shall run, so long as such incompetent or minor has no curator or tutor as the case may be.

2. Rival claimants.—Payment of compensation under this Section by an employer to a dependent subsequent in right to another or other dependents shall protect and discharge the employer unless and until such dependent or dependents prior in right shall have given the employer notice of his or their claim. In case the employer is in doubt as to the respective rights of rival claimants the employer may apply to the Court to decide between them.

§ 17. Amicable settlement.—1. Be it further enacted, etc., That the interested parties shall have the right to settle all matters of compensation between themselves. But all agreements of settlement shall be reduced to writing and shall be substantially in accord with the various provisions of this act, and shall be approved by the Court which would have jurisdiction in a civil case, or, where there is more than one Judge of said Court, then by either or any of said Judges of said Court. The agreement between employer and employee shall be presented to the Court upon joint petition of employer and employee, which petition must be verified by both parties. The settlement so approved shall be immediately entered as the judgment of the Court, and such judgment shall have the same force and effect and may be satisfied as other judgments of the same Court.

§ 18. 1. Complaint.—Be it further enacted, etc., That in case of a dispute over, or failure to agree upon a claim for compensation between employer and employee, or the dependents of the employee, either party may present a verified complaint to the Judge of the Court which would have jurisdiction in a civil case, or, where there is more than one judge of said Court, then to either or any of said Judges of such Court, setting forth the names and residences of the parties and the facts relating to employment at the time of injury, the character and extent of the injury, the amount of wages being received at the time of the injury, the knowledge of the employer or notice of the occurrence of said injury, and such other facts as may be necessary and proper for the information of said Judge, and shall state the matter or matters in dispute and the contention of the petitioner with reference thereto.

2. Answer.—Upon the presentation of such complaint, it shall be filed with the Clerk of the Court and the Judge shall fix by order a time and place for the hearing thereof, not less than three (3) weeks after the date of the filing of said complaint. A copy of said complaint and order shall be served as summons in a civil action upon the adverse party within four (4) days after filing the complaint; within seven (7) days after the service of such complaint or petition the adverse party shall file an answer to said petition, which shall admit or deny the substantial averments of the petition, and shall state the contention of the defendant with reference to the matter in dispute as disclosed by the petition. The answer shall be verified in like manner as required for a complaint or petition. The Court in its discretion may grant further time for filing the answer or hearing the complaint and allow amendments of said petition and answer at any stage of the proceedings.

3. Judgment by default.—If the time fixed for filing answer or delay, granted for filing answer by the respondent has elapsed without an answer having been filed, then upon simple request of petitioner the Judge of the Court, with whom the complaint or petition has been filed shall immediately enter a judgment in favor of petitioner in accord with the facts set forth in the verified petition filed by petitioner and the provisions of this act.

4. Hearing—Summary procedure.—If an answer has been filed by the respondent within the delays allowed by law or granted by the Court, or if no judgment has been entered as provided in the paragraph immediately above at the time fixed for hearing, or any adjournment thereof, the said judge shall hear such witnesses as may be presented by each party. Either party

shall have the right to be present at any hearing or to appear through an attorney or any other agent. The judge shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure other than as herein provided. The judge shall decide the merits of the controversy as equitably, summarily and simply as may be. Costs may be awarded by said Judge in his discretion, and when so awarded the same costs shall be allowed, taxed and collected as are allowed, taxed and collected for like services and proceedings in civil cases. The judgment rendered by the Court shall have the same force and effect and may be satisfied as other judgments of the same Court.

§ 19. Appeal—Preference.—1. Be it further enacted, etc., That either the employer or employee shall have the right to appeal to the proper appellate Court from the judgment rendered as provided in paragraph 3 of Section 1, and in Section 18. To such an appeal preference in hearing shall be given by the appellate Court such as is given in causes in which the State is an interested party. Such appeal may be prosecuted by either employer or employee without the necessity of furnishing an appeal bond and shall suspend the operation of the judgment appealed from.

§ 20. Modification of judgment.—1. Be it enacted, etc., That a judgment of compensation may be modified at any time by subsequent agreement between employer and employee, with the approval of the Judge of the Court that rendered the judgment sought to be modified, or any time after one year when said judgment of compensation shall have become operative, it may be reviewed by the Judge of the Court that rendered the judgment sought to be modified upon the application of either employer or employee, on the ground that the incapacity of the injured employee has subsequently increased, such increase growing directly out of the injury for which compensation had been allowed or diminished. In such case the provisions of paragraphs 1 and 3 of Section 9 with reference to medical examination shall apply.

§ 21 (as amended by Act No. 243 of 1916). Same preference as claim for wages.—Be it further enacted, etc., That all rights of compensation granted by this act shall have the same preference and priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages of the laborer. If it should be made to appear to the satisfaction of the Court in which a judgment for compensation has been rendered that there is reasonable room for uncertainty as to the financial responsibility of any employer against whom a judgment of compensation has been finally rendered, and that such employer has not taken out insurance against his liability under this act, the Court may order such employer to furnish a bond, with good and solvent surety, conditioned for the faithful payment of the compensation decreed to be paid. From an order so rendered the employer may appeal to the proper appellate Court as provided in section 19.

§ 22. Non-assignability and exemption.—1. Be it further enacted, etc., That claims or payments due under this act shall not be assignable and shall be exempt from all claims of creditors and from levy or execution or attachment or garnishment except under a judgment of Court for alimony in favor of a wife or ascendant or descendant. Fees of attorneys and physicians for

services under this act shall be reasonable and measured according to the workman's station and shall be approved by the Court.

§ 23. Requisites of insurance policy.—1. Be it further enacted, etc., That no policy of insurance against liability arising under this act shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy, or otherwise. Such agreement shall be construed to be a direct obligation by the insurer to the person entitled to compensation, enforceable in his name. No policy of insurance against liability under this act shall be made unless such policy shall cover the entire liability of the employer under this act.

§ 24. Same.—1. Be it further enacted, etc., That all policies insuring the payment of compensation under this act must contain a clause to the effect that as between the employee and the insurer the notice to the insured or the knowledge of the occurrence of the injury on the part of the insured shall be deemed to be notice or knowledge on the part of the insurer, as the case may be, that the jurisdiction of the insured for the purpose of this act shall be the jurisdiction of the insurer; and that the insurer shall in all things be bound by and subject to the awards, judgments, or decrees rendered against such insured.

§ 25. Insolvency of employer.—1. Be it further enacted, etc., That if any employer shall carry insurance against liability under this act, and said employer shall be or become insolvent, or any execution upon a judgment for compensation is returned unsatisfied, an employee of such employer, or the dependents of a deceased employee who shall be entitled to payments under this act may enforce their claim to payments against the insurer of such employer to the same extent that the employer could have enforced his claim against such insurer had he made such payments, any provision contained in any policy or agreement of insurance written after the date of the approval of this act to the contrary notwithstanding. And the making of accrued payments to the person entitled thereto, in accordance with the provisions of this act, shall relieve such insurer from liability.

§ 26. Policies subject to Act—Approval.—1. Be it further enacted, etc., That every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No company or association shall enter into any such policy of insurance unless its form shall have been approved by Secretary of State of Louisiana.

§ 27. Additional compensation.—1. Be it further enacted, etc., That an employer and employee who have elected to come under the provisions of this act or who may be under the provisions of this act as provided in paragraph 1 of Section 1, may by written agreement between themselves provide for compensation, in event of injury to an employee, over and above the compensation to be awarded under the provisions of this act. Such additional compensation may be provided for by the employer insuring his liability therefor in any insurance company or association authorized to do business in the State of Louisiana, and the premium therefor may be paid by employer and employee in such proportion as may be agreed upon between them.

§ 28. Defenses to compensation claims—Burden of proof.—1. Be it further enacted, etc., That no compensation shall be allowed for an injury caused (1) by the injured employee's wilful intention to injure himself or to injure another, or (2) by the injured employee's intoxication at the time of the injury, or (3) by the injured employee's deliberate failure to use an adequate guard or protection against accident provided for him or (4) by the employee's deliberate breach of statutory regulations affecting safety of life or limb.

2. In determining whether or not an employer shall be exempt from and relieved of paying compensation because of injury sustained by an employee for the causes and reasons set forth in this Section, the burden of proofs shall be upon the employer.

§ 29. Bond and report of tutor.—1. Be it further enacted, etc., That where a judgment has been rendered under the provisions of this act in favor of a minor or interdict, the tutor or curator shall be required by the Court to furnish a bond in favor of the Court for the faithful performance of his duties, and shall be required by the Court to furnish it annually with a report or accounting of the funds the said tutor or curator may be administering for the said minor or interdict. This report or accounting of the tutor or curator is not to be of the nature of the report of the tutor or curator required to be filed under existing laws, but it is to be a simple verified statement of the receipts of the tutor or curator with a detailed accounting of the expenditures.

§ 30. Interstate or foreign commerce.—1. Be it further enacted, etc., That this Act shall not be construed to apply to any employer acting as a common carrier while engaged in interstate or foreign commerce by railroad, which employer, by reason of being engaged in interstate or foreign commerce by railroad, is not subject exclusively to the legislative power of the State of Louisiana, or for which employer and the employee thereof a rule of liability or method of compensation has been, or may be, established by the Congress of the United States; nor shall it apply to any employee of such common carrier injured or killed while so employed; and nothing in this act shall be construed to apply to any work done by, nor shall any compensation be payable under this Act to, the master, officers, or any member of the crew of any vessel used in interstate or foreign commerce which said vessel is not registered or enrolled in the State of Louisiana.

2. Whenever an employee of a common carrier engaged in interstate or foreign commerce by railroad shall sustain a personal injury by accident, arising out of and in the course of his employment, resulting in his disability or death, it shall be presumed prima facie that such employer was, at the time of the accident, engaged in such commerce.

§ 31. Limitations.—1. Be it further enacted, etc., That in case of personal injury (including death resulting therefrom) all claims for payments shall be forever barred unless within one year after the injury or death the parties shall have agreed upon the payments to be made under this act, or unless within one year after the injury proceedings have been begun as provided in Sections 17 and 18 of this act. Where, however, such payments have been made in any case, said limitations shall not take effect until the expiration of one year from the time making the last payment.

§ 32. Liability of joint employers.—1. Be it further enacted, etc., That in case any employee for whose injury or death payments are due under this

act, shall at the time of the injury be employed and paid jointly by two or more employers subject to the provisions of this act, such employers shall contribute to such payments in proportion to their several wage liabilities to such employee; provided, however, that nothing in this section shall prevent any arrangement between such employers for different distribution as between themselves of the ultimate burden of such payments. If one or more, but not all such employers should be subject to this act, then the liability of such of them as are so subject shall be to pay that proportion of the entire payments which their proportionate wage liability bears to the entire wages of the employee; provided, however, that such payment by such employer subject to this act shall not bar the right of recovery against any other joint employer.

§ 33. Insolvency or failure to pay.—1. Be it further enacted, etc., That in event the employer against whom there has been rendered a judgment of Court awarding compensation in favor of an employee or dependents should become insolvent or fail to pay six successive installments as they become due, the installments not yet payable under said judgment shall immediately become due and exigible and the judgment shall become executory for the whole amount; provided, that where the employee is adequately protected by insurance and receives payments thereunder this right shall not accrue to the employee.

§ 34. Exclusive right.—1. Be it further enacted, etc., That the rights and remedies herein granted to an employee on account of a personal injury for which he is entitled to compensation under this act shall be exclusive of all other rights and remedies of such employee, his personal representatives, dependants, relations, or otherwise, on account of such injury.

§ 35. Liability for fines or penalties.—1. Be it further enacted, etc., That nothing in this act shall affect the liability of the employer to a fine or penalty under any other statute.

§ 36. No relief from liability.—1. Be it further enacted, etc., That no contract, rule, regulation or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this act except as herein provided.

§ 37. Penalty for misrepresentation.—1. Be it further enacted, etc., That if for the purpose of obtaining or defeating any benefit or payment under the provisions of this act, either for himself or any other person, any person willfully makes a false statement or representation, he shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding five hundred dollars or imprisoned not exceeding twelve months, or both, in the discretion of the Court; and an employee from and after such conviction shall cease to receive any compensation under this act.

§ 38. Accident defined.—1. Be it further enacted, etc., That the word "Accident," as used in this act shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen event happening suddenly or violently, with or without human fault and producing at the time objective symptoms of an injury.

§ 39. Personal injury.—1. Be it further enacted, etc., That the terms "Injury" and "Personal Injuries" shall include only injuries by violence to the physical structure of the body and such diseases or infections as naturally result therefrom. The said terms shall in no case be construed to in-

clude any other form of disease or derangement, howsoever caused or contracted.

§ 40. **Number and gender.**—1. Be it further enacted, etc., That whenever in this act the singular is used, the plural shall be included, where the masculine gender is used, the feminine shall be included.

§ 41. **Validity of sections independent.**—1. Be it further enacted, etc., That if any provision of this act shall be declared unconstitutional or invalid, such unconstitutionality or invalidity shall in no way affect the validity of any other portion thereof which can be given reasonable effect without the provision so declared unconstitutional or invalid.

§ 42. **Not retroactive.**—1. Be it further enacted, etc., That this act shall not affect any cause or action existing or pending before it went into effect.

§ 43. **When effective.**—1. Be it further enacted, etc., That this act shall take effect and be in force from and after January 1, 1915.

MAINE

WORKMEN'S COMPENSATION ACT

Section

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Section

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WORKMEN'S COMPENSATION ACT

(Laws 1915, c. 295.)

An Act relative to compensation to employees for personal injuries received in the course of their employment and to the prevention of such injuries. Be it enacted by the People of the State of Maine, as follows:

§ 1. **Definitions.**—The following words and phrases as used in this act shall, unless a different meaning is plainly required by the context, have the following meaning:

I. Employer.—"Employer" shall include corporations, partnerships, natural persons, the state, counties, water districts and all other quasi municipal

corporations of a similar nature, cities and also such towns as vote to accept the provisions of this act, and if employer is insured, it includes the insurer unless the contrary intent is apparent from the context or it is inconsistent with the purposes of this act.

II. Employé.—"Employee" shall include every person in the service of another under any contract of hire, express or implied, oral or written, except: (a) farm laborers; (b) domestic servants; (c) masters of and seamen on vessels engaged in interstate or foreign commerce; (d) persons whose employment is but casual, or is not in the usual course of the trade, business, profession or occupation of his employer; (e) officials of the state, counties, cities, towns or water districts and other quasi municipal corporations of a similar character. Policemen and firemen shall be deemed employees within the meaning of this act. If, however, any policeman or fireman claims compensation under this act, there shall be deducted from such compensation any sum which such policeman, fireman or other person may be entitled to receive for any pension or other benefit fund to which the state or municipal body may contribute. Any reference to an employee who has been injured shall, when the employee is dead, also include his legal representatives, dependents and other persons to whom compensation may be payable.

III. Assenting employer.—"Assenting employer" shall include all employers who have complied with the provisions of Section 6 hereof, and to whom a certificate authorized by said section has been issued, but only so long as such certificate remains in force.

IV. Commissioner.—"Commissioner" shall mean the Commissioner of Labor and Industry of the State of Maine. "Commission" shall mean the Industrial Accident Commission created by Section 29 hereof.

V. Industrial accident insurance policy.—"Industrial Accident Insurance Policy" shall mean a policy in such form as the Insurance Commissioner of the State of Maine approves, issued by any stock or mutual casualty insurance company that may be now or hereafter authorized to do business in this state, which in substance and effect guarantees the payment of the compensation, medical and hospital services, and expense of sickness and burial herein provided for, in such installments, at such time or times, and to such person or persons and upon such conditions as in this act provided. Whenever a policy or certificate of renewal thereof is filed as herein provided, a copy of such policy certified by the Insurance Commissioner of the State of Maine or his deputy, shall be admissible as evidence in any legal proceeding wherein the original would be admissible.

VI. Insurance company.—"Insurance Company" shall mean any casualty insurance company authorized to do business in the State of Maine, which may issue policies conforming to the provisions of the paragraph next preceding. Whenever in this act relating to procedure the word "Insurance Company" is used, it shall be held to apply only to cases in which the employer has elected to file such policy, instead of furnishing satisfactory proof of his ability to pay compensations and benefits hereinafter provided direct to his employees.

VII. Representatives.—"Representatives" may include executors, administrators, and the dependents of deceased employees. Payments may be made to dependents directly, or to executors or administrators. If payments are made to the latter, they shall forthwith pay the same to the dependents as the same are hereinafter defined.

VIII. Dependents.—"Dependents" shall mean members of the employee's family or next of kin, who are wholly or partly dependent upon the earnings of the employee for support at the time of the injury. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she lives or from whom she was living apart for a justifiable cause, or because he had deserted her, or upon whom she is dependent at the time of the accident.

(b) A husband upon a wife with whom he lives, or upon whom he is dependent at the time of the accident.

(c) A child or children, including, adopted and stepchildren under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning) upon the parent with whom he is or they are living, or upon whom he is or they are dependent at the time of the death of said parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the compensation shall be divided equally among them.

In all cases questions of entire or partial dependency shall be determined in accordance with the fact, as the fact may have been at the time of the injury. In such other cases, if there is more than one person wholly dependent the compensation shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof during the period in which compensation is paid to persons wholly dependent. If there is anyone wholly dependent and more than one person partly dependent, the compensation shall be divided among them according to the relative extent of their dependency. If a dependent is an alien residing outside of the United States, or of the Dominion of Canada, the compensation paid to any such dependent shall be one-half that hereinafter provided in case of the death of an employee.

IX. Average weekly wages, earnings or salary.—"Average weekly wages, earnings or salary" of an injured employee shall be computed as follows:

(a) If the injured employee has worked in the same employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his "average weekly wages" shall be three hundred times the average daily wages, earnings or salary which he has earned in such employment during the days when so employed and working the number of hours constituting a full working day in such employment, divided by fifty-two. But where the employee is employed regularly during the ordinary working hours concurrently by two or more employers, for one of whom he works at one time and for another he works at another time, his "average weekly wages" shall be computed as if the wages, earnings or salary received by him from all such employers were wages, earnings or salary earned in the employment of the employer for whom he was working at the time of the accident.

(b) If the injured employee has not so worked in such employment during substantially the whole of such immediately preceding year, his "average weekly wages" shall be three hundred times the average weekly wages, earnings or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or a similar employment, in the same or a neighboring place, has earned in such employment during the days when so employed and working the number of hours constituting a full working day in such employment, divided by fifty-two.

(c) In cases where the foregoing methods of arriving at the "average weekly wages, earnings or salary" of the injured employee cannot reasonably and fairly be applied, such "average weekly wages" shall be taken at such sum as, having regard to the previous wages, earnings or salary of the injured employee and of other employees of the same or most similar class, working in the same or most similar employment in the same or a neighboring locality, shall reasonably represent the weekly earning capacity of the injured employee at the time of the accident in the employment in which he was working at such time.

(d) Where the employer has been accustomed to pay to the employee a sum to cover any special expense incurred by said employee by the nature of his employment, the sum so paid shall not be reckoned as part of the employee's wages, earnings or salary.

(e) The fact that an employee has suffered a previous injury or received compensation therefor, shall not preclude compensation for a later injury or for death; but in determining the compensation for the later injury or death, his "average weekly wages" shall be such sum as will reasonably represent his weekly earning capacity at the time of the later injury, in the employment in which he was working at such time, and shall be arrived at according to and subject to the limitations of the previous provisions of this section.

In the sections of this act relating to notices and procedure, all powers and rights granted to, or duties and obligations imposed upon employers or employees, shall inure to the benefit of and may be exercised by guardians of minors or other incapacitated persons and the legal representatives of deceased persons.

§ 2. Abolition of defenses.—In an action to recover damages for personal injuries sustained by an employee in the course of his employment, or for death, resulting from personal injury so sustained, it shall not be a defense (a) that the employee was negligent; (b) that the injury was caused by the negligence of a fellow employee; (c) that the employee had assumed the risk of the injury.

§ 3. More than five employés—Employer having more than one kind of business.—The provisions of section 2 shall not apply to employers who employ five or less workmen or operatives regularly in the same business, and in case of the employer being engaged in more than one kind of business, in one of which he employs five or more workmen or operatives regularly, and in another employs five or less workmen or operatives, the fact that he elects to become subject to the provisions of this act shall not bring him within the provisions of it as to any such business in which he employs five or less workmen or operatives, and at the time of electing to become subject to the provisions of this act, if engaged in more than one kind of business, he shall specify the business or businesses in which he is engaged and concerning which he desires to come under the provisions hereof.

§ 4. Employés excepted.—The provisions of this act shall not apply to actions to recover damages for personal injuries or for death resulting from personal injuries sustained by employees engaged in domestic service or agriculture, or in the work of cutting, hauling, rafting or driving logs.

§ 5. Abolition of defenses—Election—Exemption from other suits.—The provisions of section 2 shall not apply to actions to recover damages for personal injuries or for death resulting from personal injuries sustained by

employees of an employer who has elected to become subject to this act in the manner provided in section 6 hereof. In the case of personal injury sustained by an employee in the course of his employment or of death resulting from personal injury so sustained, assenting employers shall be exempt from suits either at common law or under section 9, chapter 89, of the Revised Statutes, or chapter 258 of the Public Laws of 1909.

§ 6. I. Election—Written assent—Approval of Policies.—Any employer desiring to become an assenting employer as herein provided, may file with the Commission at its office in Augusta, his written assent in such form as the Commission approves and also file with said Commission a copy of an industrial accident insurance policy in any stock or mutual insurance company or association authorized to do business in the State of Maine, said policy being stamped with the approval of the insurance commissioner of said State of Maine.

Any insurance company issuing policies covering the payment of compensation provided for in this Act shall file with the Insurance Commissioner a copy of the form thereof, and no such policy shall be issued until said Insurance Commissioner has approved the same. Every such insurance company shall file with the Insurance Department its classification of risks and premiums relating thereto, and any subsequent proposed classifications or premiums, none of which shall take effect until the Insurance Commissioner has approved the same as adequate for the risks to which they respectively apply. The Insurance Commissioner may withdraw his approval of any classification of risks or premium rates relating thereto, and he may at any time approve a revised classification of risks and premium rates relating thereto.

II. Option of employer—Bond.—Any employer desiring to become an assenting employer as herein provided, may file with the Commission his written assent in such form as said Commission approves, after furnishing satisfactory proof to the Commission of his solvency and financial ability to pay the compensation and benefits herein provided, and upon the deposit of cash, satisfactory securities or a bond, as the Commission may determine, such bond to run to the state treasurer and his successor in office in such sum as said Commission may determine and shall be conditional upon the faithful performance of all the provisions of this act relating to the payment of compensations and benefits to any injured employee. In case of cash being deposited it shall be placed at interest by the state treasurer and the accumulation of interest on said cash or securities so deposited shall be paid to the employer depositing the same. Provided, however, that the Commission may at any time in their discretion deny to an assenting employer the right to continue in the exercise of the option granted by this paragraph.

III. Certificate.—Upon the filing of such assent and complying with the provisions of paragraphs I or II of this section, the Commissioner shall issue to such employer a certificate stating that such employer has conformed to the provisions of this act and setting forth the date on which the policy filed under paragraph I expires. The certificate thus issued shall remain in full force until the date of the expiration of such policy, or until withdrawn as provided in paragraph II, or until the employer assenting under paragraph II shall notify the Commissioner that he withdraws his assent, or files an industrial accident policy in place of the securities so deposited by him.

IV. Substitute system.—Subject to the approval of the Commission any employer may continue with his employees in lieu of the compensation and

insurance provided by this act the system of compensation, benefit or insurance which was used by such employer on the first day of January, A. D. 1915. No such substitute system shall be approved unless it confers benefits upon injured employees at least equivalent to the benefits provided by this act, nor if it requires contributions from the employees, unless it confers benefits in addition to those provided under this act at least commensurate with such contributions. Such substitute system may be terminated by the Commission on reasonable notice and hearing to the interested parties if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purposes of this act. An employer who is authorized to substitute a plan under the provisions of this section shall give his employees notice thereof in a form to be prescribed by the Commission, and a statement of the plan approved shall be filed with the Commission.

V. Notice.—A notice in such form as the Commission approves, stating that the employer has conformed to the provisions of this act and the date of the expiration of the policy filed, together with such further matters as the Commission determines, shall be posted by the employer and kept posted by him at some place in each of his mills, factories or place of business, conspicuous and accessible to his employees. For willful failure to post such notices, the employer shall be subject to a penalty of ten dollars per day for every day of such willful neglect, to be recovered by complaint or indictment. Such failure to so post notices shall not, however, affect the rights or liabilities of the employer or the employee hereunder.

§ 7. Waiver of other remedies—Minor employé.—An employee of an employer who shall have elected to become subject to the provisions of this act as provided in section 6 of this act shall be held to have waived his right of action at common law to recover damages for personal injuries; also under section 9 of chapter 89, R. S., or chapter 258 of the public laws of 1909, if he shall not have given his employer at the time of his contract of hire notice in writing that he claimed such right, and within ten days thereafter have filed a copy thereof with the commission or, if the contract of hire was made before the employer so elected, if the employee shall not have given the said notice and filed the same with said commission within ten days after notice by the employer, as above provided, of such election, and such waiver shall continue in force for the term of one year, and thereafter without further act on his part, for successive terms of one year, each, unless such employee shall at least sixty days prior to the expiration of such first or any succeeding year, file with the said commissioner a notice in writing to the effect that he desires to claim his said right of action at common law and within ten days thereafter shall give notice thereof to his employer. A minor working at an age legally permitted under the laws of this state shall be deemed *sui juris* for the purpose of this act and no other person shall have any cause of action or right to compensation for an injury to such minor employee except as expressly provided in this act; but if said minor shall have a parent living or a guardian, such parent or guardian, as the case may be, may give the notice and file a copy of the same as herein provided by this section, and such notice shall bind the minor in the same manner that adult employees are bound under the provisions of this act. In case no such notice is given, such minor shall be held to have waived his right of action at common law, or under the statutes above referred to, to recover damages for per-

sonal injuries. Any employee, or the parent or guardian of any minor employee, who has given notice to the employer that he claimed his right of action at common law, or under the statutes above referred to, may waive such claim by a notice in writing which shall take effect five days after the delivery to the employer or his agent.

§ 8. **Intentional injury or intoxication.**—No compensation shall be allowed for the injury or death of an employee where it is proved that his injury or death was occasioned by his wilful intention to bring about the injury or death of himself or of another, or that the same resulted from his intoxication while on duty. This provision as to intoxication shall not apply, if the employer knew or in the exercise of ordinary care might have known that the employee was intoxicated or that he was in the habit of becoming intoxicated while on duty.

§ 9. **Waiting period.**—No compensation except as provided by section 10 of this act shall be paid under this act for any injury which does not incapacitate the employee for a period of at least two weeks from earning full wages, but, if such incapacity extends beyond the period of two weeks, compensation shall begin on the fifteenth day after the injury.

§ 10. **Medical, surgical and hospital treatment.**—During the first two weeks after the injury the employer shall furnish reasonable medical and hospital services, and medicines when they are needed, but the amount of the charge for such services and medicines shall not exceed the sum of thirty dollars, unless in case of major surgical operations being required, and the employer and employee being unable to agree upon the same, the amount to be allowed for such medical services or medicines shall be fixed by the Commission upon petition by either party setting forth the facts.

§ 11. **Effect of waiver of other remedies.**—If an employee who has not given notice of his claim of common law or statutory rights or action, or who has given such notice and has waived the same, as provided in section 7 of this act, receives a personal injury by accident arising out of and in the course of his employment, he shall be paid compensation as hereinafter provided, by the employer who shall have elected to become subject to the provisions of this act.

§ 12. **Death benefits—Total and partial dependents.**—If death results from the injury, the employer shall pay the dependents of the employee wholly dependent upon his earnings for support at the time of his injury a weekly payment equal to one-half his average weekly wages, earnings, or salary, but not more than ten dollars nor less than four dollars a week, for a period of three hundred weeks from the date of the injury; Provided, however, that if the dependent of the employee to whom the compensation shall be payable upon his death is the widow of such employee, upon her death the compensation thereafter payable under this act shall be paid to the child or children of the deceased employee, including adopted and step-children, under the age of eighteen years, or over said age but physically or mentally incapacitated from earning, are dependent upon the widow at the time of her death. In case there is more than one child thus dependent, the compensation shall be divided equally among them. If the employee leaves dependents only partly dependent upon his earnings for support at the time of his injury, the employer shall pay such dependents for a period of three hundred weeks from the date of the injury a weekly compensation equal to the same proportion of the weekly payments herein provided for the benefit of persons wholly de-

pendent as the amount contributed annually by the employee to such partial dependents bears to the annual earnings of the deceased at the time of injury. When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred weeks from the date of the injury. Provided, however, that if the deceased leaves no dependents at the time of the injury, the employer shall not be liable to pay compensation under this act except as specifically provided in section 13 of this act.

§ 13. **No dependents—Medical and burial expense.**—If the employee dies as a result of the injury leaving no dependents at the time of the injury, the employer shall pay, in addition to any compensation provided for in this act, the reasonable expense of his last sickness and burial, which shall not exceed two hundred dollars.

§ 14. **Permanent total disability.**—While the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to one-half his average weekly wages, earnings or salary, but not more than ten dollars nor less than four dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks from the date of the injury, nor the amount more than three thousand dollars. In the following cases it shall, for the purposes of this act, be conclusively presumed that the injury resulted in permanent total disability, to wit: The total and irrevocable loss of sight in both eyes, the loss of both feet at or above the ankle, the loss of both hands at or above the wrist, the loss of one hand and one foot, an injury to the spine resulting in permanent and complete paralysis of the legs or arms, and an injury to the skull resulting in incurable imbecility or insanity.

§ 15. **Partial disability.**—While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to one-half the difference between his average weekly wages, earnings or salary, before the injury and the average weekly wages, earnings or salary which he is able to earn thereafter, but not more than ten dollars a week; and in no case shall the period covered by such compensation be greater than three hundred weeks from the date of the injury.

§ 16. **Schedule.**—In cases included in the following schedule the disability in each such case shall be deemed to be total for the period specified and after such specified period, if there be a partial incapacity for work resulting from the injury specified, the employee shall receive compensation while such partial incapacity continues under the provisions of section 15, but in no case shall compensation continue more than three hundred weeks after the injury. The compensation to be paid for the injuries hereinafter specified shall be as follows, to wit:

For the loss of a thumb, one-half the average weekly wages during fifty weeks.

For the loss of the first finger, commonly called the index finger, one-half the average weekly wages during thirty weeks.

For the loss of the second finger, one-half the average weekly wages during twenty-five weeks.

For the loss of the third finger, one-half the average weekly wages during eighteen weeks.

For the loss of the fourth finger, commonly called the little finger, one-half the average weekly wages during fifteen weeks.

The loss of the first phalange of the thumb or of any finger, shall be considered to be equal to the loss of one-half of said thumb or finger, and the compensation shall be one-half the amount above specified. The loss of more than one phalange shall be considered as a loss of the entire thumb or finger; provided, however, that in no case shall the amount received for the loss of more than one finger exceed the amount specified in this schedule for the loss of a hand.

For the loss of the great toe, one-half the average weekly wages during twenty-five weeks.

For the loss of one of the toes other than the great toe, one-half the average weekly wages during ten weeks.

The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of said toe and the compensation shall be one-half of the amount above specified.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, one-half the average weekly wages during one hundred and twenty-five weeks.

For the loss of an arm, or any part above the wrist, one-half the average weekly wages during one hundred and fifty weeks.

For the loss of a leg, or any part above the ankle, one-half the average weekly wages during one hundred and fifty weeks.

For the loss of a foot, one-half the average weekly wages for one hundred and twenty-five weeks.

For the loss of an eye or the reduction of the sight of an eye, with glasses, to one-tenth of the normal vision, one-half the average weekly wages during one hundred weeks.

The amounts specified in this section are all subject to the same limitations as to maximum and minimum amounts, that is, of not more than ten and not less than four dollars a week, as provided for total or partial disability.

§ 17. Notice and claim—Time limitations.—No proceedings for compensation for an injury under this act shall be maintained unless a notice of the accident shall have been given to the employer within thirty days after the happening thereof; and unless the claim for compensation with respect to such injury shall have been made within one year after the occurrence of the same, or, in case of his physical or mental incapacity, within one year after death or the removal of such physical or mental incapacity.

§ 18. Requisites of notice.—Such notice shall be in writing and shall state in ordinary language the nature, time, place and cause of the injury, and the name and address of the person injured and shall be signed by the person injured, or by a person in his behalf, or, in the event of his death, by his legal representatives, or by a dependent, or by a person in behalf of either.

§ 19. Service of notice.—Such notice shall be served upon the employer, or upon one employer, if there are more employers than one, or, if the employer is a corporation, upon any officer or agent upon whom process may be served, or by leaving it at his last known residence or place of business, or by sending it by registered mail addressed to the person to be served, or in the case of a corporation, to the corporation itself, at his or its last known resi-

dence or place of business; and such mailing of the notice shall constitute a completed service.

§ 20. Inaccuracies of notice—Actual knowledge.—A notice given under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the nature, time, place or cause of the injury, or the name and address of the person injured, unless it is shown that it was the intention to mislead and the employer was in fact misled thereby. Want of notice shall not be a bar to proceedings under this act, if it be shown that the employer or his agent had knowledge of the injury, or that failure to give such notice was due to accident, mistake or unforeseen cause.

§ 21. Medical examination.—The employee shall after the injury, at all reasonable times during the continuance of his disability, if so requested by his employer, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of this state, to be selected and paid for by the employer. The employee shall have the right to have a physician or surgeon selected and paid for by himself, present at such examination of which right the employer shall give him notice when requesting such examination.

The chairman of the Commission may at any time after the injury appoint a competent and impartial physician or surgeon to act as a medical examiner, and the reasonable fees of such medical examiner shall be fixed and paid by the Commission.

Such medical examiner being first duly sworn to the faithful performance of his duties before any justice of the peace, or any clerk of the Supreme Judicial Court, shall thereupon and as often as the chairman of the Commission may direct, examine such injured employee in order to determine the nature, extent and probable duration of the injury. Such medical examiner shall file a report of every examination made of such employee in the office of the Commission, and a copy thereof certified by the clerk of said Commission may be produced in evidence in any hearing or proceedings to determine the amount of compensation due said employee under the provisions of this act. If such employee refuses to submit himself to examination provided for in this act, or in any way obstruct any such examination, his rights to compensation shall be suspended and his compensation during such period of suspension may be forfeited.

§ 22. Other benefits not considered.—No savings or insurance of the injured employee, independent of this act, shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any other source than the employer be considered in fixing the compensation under this act.

§ 23. Incompetents or minors—Guardian.—In case an injured employee is mentally incompetent, or, where death results from the injury, in case any of his dependents entitled to compensation hereunder are mentally incompetent or minors at the time when any right, privilege or election accrues to him or them under this act, his guardian, or next friend may, in his behalf, claim and exercise such right, privilege or election, and no limitation of time in this act provided shall run so long as such incompetent or minor has no guardian.

§ 24. Waiver—Non-assignability.—No agreement by an employee, except as provided in section 30, to waive his rights to compensation under this

act shall be valid. No claims for compensation under this act shall be assignable, or subject to attachment, or liable in any way for debts.

§ 25. Contract in state, employment without.—Employers who hire workmen within this state to work outside of the state, may agree with such workmen that the remedies under this act shall be exclusive as regards injuries received outside this state by accident arising out of and in the course of such employment; and all contracts of hiring in this state shall be presumed to include such an agreement.

§ 26. Third person liable—Option of employé—Subrogation of employer.—When any injury for which compensation is payable under this act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employee may, at his option, either claim compensation under this act, or obtain damages from or proceed at law against such other person to recover damages; and if compensation is claimed and awarded under this act, any employer having paid the compensation or having become liable therefor shall be subrogated to the rights of the injured employee to recover against that person, provided, if the employer shall recover from such other person damages in excess of the compensation already paid or awarded to be paid under this act, then any such excess shall be paid to the injured employee less the employer's expenses and costs of action.

§ 27. Preference of compensation claims.—The claim for compensation under this act, and any decree on any such claim, shall be entitled to a preference over the unsecured debts of the employer hereafter contracted to the same amount as the wages of labor are now preferred by the laws of this state, but nothing herein shall be construed as impairing any lien which the employee may have acquired.

§ 28. Commutation to lump sum.—In case payments have continued for not less than six months either party may, upon due notice to the other party, petition the Commission for an order commuting the future payments to a lump sum. Such petition shall be considered by the Commission and may be summarily granted where it is shown to the satisfaction of the Commission that the payment of a lump sum in lieu of future weekly payments will be for the best interest of the person or persons receiving or dependent upon such compensation, or that the continuance of weekly payments will, as compared with lump sum payments, entail undue expense or undue hardship upon the employer liable therefor, or that the person entitled to compensation has removed or is about to remove from the United States. Where the commutation is ordered, the Commission shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments, capitalized at their present value upon the basis of interest calculated at five per centum per annum with annual rests. Upon payment of such amount the employer shall be discharged from all further liability on account of the injury or death, and be entitled to a duly executed release, upon filing which, or other due proof of payment, the liability of such employer under any agreement, award, findings, or decree shall be discharged of record.

§ 29. Industrial Accident Commission—Chairman—Secretary and expenses—Seal—Office—Powers.—A Commission is hereby created to be known as The Industrial Accident Commission of the State of Maine and it shall consist of three members. The Insurance Commissioner and the Commissioner

of Labor and Industry shall be ex officio members of this Commission. The Governor shall appoint a chairman of this Commission, who shall be learned in the law and a member of the bar in good standing and who shall hold office for three years from date of appointment and unless removed, as hereunder provided, shall hold office until his successor is appointed and qualified. Such chairman shall be sworn, and for inefficiency, wilful neglect of duty or for malfeasance in office, may after notice and hearing be removed from office by the Governor and Council. In case of vacancy occurring through death, resignation or removal, the Governor shall appoint a successor for the whole term of three years, subject to removal as aforesaid. Such chairman shall receive a salary of twenty-five hundred dollars per annum. The other members of the Commission shall receive a salary of five hundred dollars per annum in addition to compensation received by them under existing law. The members of the Commission shall also receive their actual necessary cash expenses while away from their office on official business.

The Commission shall have a secretary appointed and removable by it, whose salary shall be fifteen hundred dollars per annum. It shall be allowed the sum of two thousand dollars, or so much thereof as is necessary, for expert and clerical assistance and other expenses in organizing a suitable system of administration. From and after January first, 1916, there shall be appropriated the sum of seven thousand five hundred dollars per annum, or such part thereof as is necessary for clerical and other assistance, traveling expenses, physicians' and witness fees and other necessary expenses.

The Commission shall have a seal bearing the words "Industrial Accident Commission Maine." It shall have its office and keep its records in the State House in Augusta, but may hold sessions at any place within the state. The Commission shall have general supervision over the administration of this act and shall have the following powers:

I. To make rules and regulations not inconsistent with this act or other laws of the state for the purpose of carrying out the provisions hereof.

II. To issue subpoenas for witnesses and subpoenas duces tecum to compel the productions of books and papers relating to any questions in dispute before it.

III. The chairman of said Commission at any hearing before him under the provisions of this act, shall also have power to issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books and papers relating to any matters in dispute before him. Witness fees in all proceedings under this act shall be the same as witnesses before Supreme Judicial Courts.

§ 30. Agreement—Approval—Petition where dispute.—If the employer and employee reach an agreement in regard to compensation under this act, a memorandum of such agreement signed by the parties shall be filed in the office of the Commission. If the Commissioner finds that such agreement is in conformity with the provisions of this act, he shall approve the same and the clerk of the Commission shall record it in a book kept for that purpose. In case the Commissioner shall find that any such agreement is not in conformity with the provisions of this act and shall refuse to approve the same, or if the employer and employee fail to reach an agreement in regard to compensation under this act, either employer or employee; and when death has resulted from the injury and the dependents of the deceased employee entitled

to compensation are, or the apportionment thereof among them is in dispute, any person in interest, may file in the office of the Commission a petition setting forth the names and residences of the parties, the facts relating to the employment at the time of the injury, the cause, extent and character of the injury and the knowledge of the employer or notice of the occurrence of the injury, and, if an agreement had been reached between the parties which had not been approved by the Commissioner, the form of such agreement and such other facts as may be necessary and proper for the determination of the matter in dispute, and shall state the matter in dispute and the claims of the petitioner with reference thereto.

§ 31. Notice to parties.—Within four days after the filing of the petition, a copy thereof attested by the clerk of the Commission shall be mailed by said clerk, postage prepaid, to the other parties named in the petition, or notice be given in such other manner as the Commission may determine.

§ 32. Answer.—Within ten days after the filing of such petition, all the other parties interested in opposition to the petition shall file an answer to said petition and furnish a copy thereof to the petitioner, which answer shall state the claims of the opponents with reference to the matter in dispute as disclosed by the petition. The chairman of said Commission may grant further time for filing answer and allow amendments to said petition and answer at any stage of the proceedings. If any party opposing such petition does not file an answer within the time limited, the hearing shall proceed upon the petition. If any party be an infant or person under disability, either parent or a guardian, or a guardian ad litem for such infant or person under disability may file the petition or answer required by this section.

§ 33. Hearing—Where held.—The whole matter shall then be referred to the chairman of said Commission, who shall fix a time for hearing upon the request of either party, upon a three days' notice given to the other party. All hearings shall be held in the town where the accident occurred, unless the claimant shall in writing request that it be held in some other place.

§ 34. Decision of Commission—Appeal.—If from the petition and answer there appear to be facts in dispute, the chairman of the Commission shall then hear such witnesses as may be presented by each party, or by agreement the claims of both parties as to the facts in dispute may be presented by affidavits. From the evidence thus furnished the chairman shall, in a summary manner, decide the merits of the controversy. His decision, together with a statement of the facts submitted, his findings of fact and rulings of law, and any other matters pertinent to the questions raised at the hearing, shall be filed in the office of the Commission, and a copy thereof certified by the clerk of the Commission mailed forthwith to all parties interested. His decision, in the absence of fraud, upon all questions of fact shall be final.

Any party in interest may present copies certified by the clerk of said Commission of any order or decision of the Commission or of its chairman, or of any memorandum of agreements approved by the Commissioner, together with all papers in connection therewith, to the clerk of courts for the county in which the injury occurred; whereupon any justice of the supreme judicial court shall render a decree in accordance therewith and notify all the parties. Such decree shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though rendered in a suit in equity duly heard and determined by said court, except there shall be no appeal therefrom upon

questions of fact found by said Commission or its chairman, or where the decree is based upon a memorandum of agreement approved by the Commissioner. Upon any appeal therefrom the proceedings shall be the same as in appeals in equity procedure and the law court may, after consideration, reverse or modify any decree made by a justice, based upon an erroneous ruling or finding of law. There shall be no appeal from a decree based upon any order or decision of the Commission or of its chairman, or upon any memorandum of agreement approved by the Commissioner, which has not been certified and presented to the court within ten days after the notice of the filing thereof by the Commission or its chairman. Upon the presentation to it of a certified copy of any decision of the chairman of the Commission terminating, diminishing, increasing, or modifying any payments under the provisions of section 36, or under any decision of said chairman or any agreement approved by the Commissioner the court shall revoke or modify its decree, if any has been based thereon, to conform to such decision.

§ 35. Effect of approved agreement—Enforcement.—Any agreement between employer and employee filed with the Commission and approved by the Commissioner or any decision of the chairman of said Commission under the provisions of section 34, shall have the same effect as the judgment of a court, and a copy thereof certified to by the clerk of said Commission and filed with the clerk of the court of the county in which either the employer or employee resides, or where the business of the employer is located, shall be enforceable by the supreme judicial court by any suitable process including execution against the goods, chattels and real estate, and including proceedings for contempt for wilful failure or neglect to obey the orders or decrees of the court, or in any other manner that decrees in equity may be enforced.

§ 36. Review by chairman of Commission—Modification of award.—At any time before the expiration of two years from the date of the approval of an agreement by the Commissioner, or the entry of a decree fixing compensation, but not afterwards, and before the expiration of the period for which compensation has been fixed by such agreement or decree, but not afterwards, any agreement, award, findings or decree may be from time to time reviewed by the chairman of said Commission upon the application of either party, after due notice to the other party upon the ground that the incapacity of the injured employee has subsequently ended, increased or diminished. Upon such review the said chairman may increase, diminish, or discontinue the compensation from the date of the application for review in accordance with the facts, or make such other order as the justice of the case may require, but shall order no change of the status existing prior to the application for review. The finding of the said chairman upon such review shall be served on the parties and filed with the clerk of the Commission and may be certified to the court in like time and manner and subject to like disposition as in the case of original decrees; provided that an agreement for compensation may be modified at any time by a subsequent agreement between the parties approved by the Commissioner in the same manner as original agreements in regard to compensation are required to be approved by the provisions of section 30 of this act.

§ 37. Rules of procedure—Liberal construction.—The Commission may prescribe forms and make suitable orders as to procedure adapted to secure a speedy, efficient and inexpensive disposition of all proceedings under this act;

and in interpreting this act it shall construe it liberally and with a view to carrying out its general purpose. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act.

§ 38. No abatement for death.—No proceedings under this act shall abate because of the death of the petitioner, but may be prosecuted by his legal representative or by any person entitled to compensation by reason of said death, under the provisions of this act.

§ 39. Limitations.—An employee's claim for compensation under this act shall be barred unless an agreement or a petition, as provided in section 30 shall be filed within two years after the occurrence of the injury, or, in case of the death of the employee, or in the event of his physical or mental incapacity, within two years after the death of the employee or the removal of such physical or mental incapacity.

§ 40. Compulsory for state, counties, cities and municipal corporations.—This act shall be compulsory as to the state, counties, cities, water districts and other quasi municipal corporations of a similar nature. The provisions of section 6 of this act shall not apply to the state, counties, cities, water districts and other quasi municipal corporations of a similar nature or to any towns voting to accept the provisions of this act.

§ 41. Employer's report of accident—Approval of final settlement.—All assenting employers shall make prompt reports to the Commission of all accidents to their employees in the course of employment, with the average weekly wages or earnings of such employees, and together with such other particulars as the Commission may require and shall also report whenever the injured employee shall resume his employment and the amount of his wages or earnings.

Whenever any final settlement is made with any injured employee, either by the employer or insurance company, a copy of the receipt or final agreement showing the total amount of money paid to such injured employee, shall be filed with the Commission, but shall not be binding without the approval of the Commission or of its chairman. Any employer or insurance company that shall wilfully neglect or refuse to make such reports or file any receipts or agreements required to be filed under this act, shall be liable to a forfeiture of ten dollars for each day of such wilful neglect or refusal, to be enforced by the Commission in an action of debt in the name of the state. All sums so recovered shall be paid into the state treasury and be credited to the appropriation made for the administration of this act.

§ 42. Information to Commission.—Any insurance company insuring employers under this act shall fill out any blanks and answer all questions submitted to them that may relate to policies, premiums, amount of compensations paid, and such other information as the Commission or the insurance commissioner may deem important, either for the proper administration of this act or for statistical purposes. Any insurance company which shall refuse to fill out such blanks or answer such questions shall be liable to a forfeiture of ten dollars for each day of such refusal, to be enforced by the Commission in an action of debt in the name of the State. All money so recovered shall be paid into the state treasury and credited to the appropriation for the administration of this act.

§ 43. Annual report of Commission.—The Commission shall make an annual report giving full statistical information as may be contained in their department in relation to the administration of this act, particularly with

reference to the number of employees affected, the number injured, the amount of compensations received and the cost of the same to the employers.

§ 44. **Interstate commerce.**—This act shall affect the liability of employers to employees engaged in interstate or foreign commerce or otherwise only so far as the same is permissible under the laws of the United States.

§ 45. **Payments to non-residents.**—If an employee receiving a weekly payment under this act shall cease to reside in the state, or, if his residence at the time of the accident is in an adjoining state, the Commission upon application of either party may, in its discretion, having regard to the welfare of the employee and the convenience of the employer, order such payment to be made monthly or quarterly instead of weekly.

§ 46. **Unconstitutionality of part or section.**—If any part or section of this act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the act as a whole, or any part thereof, which can be given effect without the part so decided to be unconstitutional or invalid.

§ 47. **False statement or representation.**—If for the purpose of obtaining any benefit or payment under the provisions of this act, either for himself or for any other person, any one wilfully makes a false statement or representation, he shall be guilty of a misdemeanor and liable to a fine of not exceeding fifty dollars, and he shall forfeit all right to compensation under this act after conviction for such offense.

§ 48. **When effective.**—The duties of the Commission shall begin on the first day of October, A. D. nineteen hundred and fifteen, but the provisions of this act shall not apply to injuries sustained, or accidents which occur prior to January one, A. D. nineteen hundred and sixteen.

§ 49. **Blank forms.**—The Commission shall have authority to provide blank forms of notices, agreements and other forms required in its department under this act.

§ 50. **Repealing clause.**—All acts and parts of acts inconsistent with this act are hereby repealed.

§ 51. **Name of Act.**—This act may be cited as the Workmen's Compensation Act.

MARYLAND

WORKMEN'S COMPENSATION ACT

Section

- Purpose and scope of Act—Enacting clause.

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WORKMEN'S COMPENSATION ACT

(Acts 1914, c. 800, as amended by Acts 1916, cc. 86, 368, 597.)

An Act to promote the general welfare of this State by providing compulsory insurance against accident or death of workmen engaged in extra-hazardous employments in this State, and providing for the form, kind and method of such insurance and the incidents thereto; and providing for the amounts of compensation payable thereunder and the person or persons to whom such compensation is payable; and providing for the creation of a State Industrial Accident Commission and defining its powers; and providing for the creation of a State Accident Fund; and providing for an appropriation to carry out the provisions of this Act; and providing for the abolishment in certain cases of the defenses of "Assumption of Risks," "Contributory Negligence" and the "Negligence of a Fellow Servant" in actions, for personal injury and death, and to repeal Chapter 837 of the Acts of 1912, and to repeal Chapter 139 of the Acts of 1902, Chapter 153 of the Acts of 1910 as amended by the Acts of 1912, Chapter 445, and to provide for the equitable disposition of the funds created by virtue of the said Acts of 1902, Chapter 139, and the Acts of 1910, Chapter 153.

Purpose and Scope of Act—Enacting Clause.—Whereas, the State of Maryland recognizes that the prosecution of various industrial enterprises which must be relied upon to create and preserve the wealth and prosperity of the State involves injury to large numbers of workmen, resulting in their partial or total incapacity or death, and that under the rules of the common law and the provisions of the statutes now in force an unequal burden is cast upon its citizens, and that in determining the responsibility of the employer on account of injuries sustained by his workmen, great and unnecessary cost is now incurred in litigation, which cost is borne by the workmen, the employers and the taxpayers, in part, in the maintenance of courts and juries to determine the question of responsibility under the law as it now exists; and

Whereas, in addition thereto, the State and its taxpayers are subjected to a heavy burden in providing care and support for such injured workmen and their dependents, which burden should, in so far as may be consistent with the rights and obligations of the people of the State, be more fairly distributed as in this Act provided; and

Whereas, the common law system governing the remedy of workmen against employers for injuries received in extra-hazardous work is inconsistent with modern industrial conditions; and injuries in such work, formerly occasional, have now become frequent and inevitable.

Now, Therefore, The State of Maryland, exercising herein its police and sovereign power, declares that all phases of extra-hazardous employments be,

and they are hereby withdrawn from private controversy, and sure and certain relief for workmen injured in extra-hazardous employments and their families and dependents are hereby provided for, regardless of questions of fault and to the exclusion of every other remedy, except as provided in this Act.

STATE INDUSTRIAL ACCIDENT COMMISSION

§ 1. Members of Commission—Office.—A Commission is hereby created which shall be known as the State Industrial Accident Commission, to be composed of three Commissioners. Immediately upon the taking effect of this Act, the Governor shall appoint such Commissioners (not more than two of whom shall belong to the same political party). One of them shall hold office for the first two years, another for the first four years, and another for the first six years following the passage and approval of this Act. Thereafter the term shall be six years. Each Commissioner shall devote his entire time to the duties of the office, and shall not hold any position of trust or engage in any occupation or business interfering or inconsistent with his duties as such Commissioner, or serve on or under any committee of a political party. Each Commissioner shall hold office until his successor shall be appointed and shall have qualified. Vacancies shall be filled by the Governor for the unexpired term. A decision on any question arising under this Act concurred in by two of the Commissioners shall be the decision of the Commission. The Governor may at any time remove any Commissioner from office for inefficiency, neglect of duty or malfeasance in office. Before such removal he shall give such Commissioner a copy of the charges against him, and shall fix a time when he can be heard in his own defense, either in person, or by counsel, which shall not be less than ten days thereafter, and such hearing shall be open to the public. The Governor shall designate a member of said Commission as chairman thereof. The principal office of the Commission shall be in the City of Baltimore, but branch offices may be established at other places in the State for the purpose of administering this Act. [Acts 1914, c. 800, § 1.]

§ 2. Quorum—Hearings—Order of Commission.—A majority of the Commission shall constitute a quorum for the transaction of business, and a vacancy shall not impair the right of the remaining members to exercise all the powers of the full Commission, so long as a majority remains. Any investigation, inquiry or hearing which the Commission is authorized to hold, or undertake, may be held or undertaken by or before any one member of the Commission, and every order made by a member thereof, when approved and confirmed by a majority of the members and so shown on its record of proceedings, shall be deemed to be the order of the Commission. [Id. § 2.]

§ 3. Salary—Expenses.—The salary of each of the Commissioners shall be three thousand dollars (\$3,000.00) per annum, and shall be paid out of the State Treasury, and in addition to the said sum of \$3,000 per annum, each of said Commissioners shall also receive the sum of \$2,000 per annum which shall be paid out of its funds by the Mayor and City Council of Baltimore to each of said Commissioners as employes of said municipal corporation. In addition to the salary provided in this section, each Commissioner shall be allowed his actual and necessary traveling and incidental expenses. [Id. § 3.]

§ 4. Sessions—Record—Criminal divulgence of information.—The Commission shall be in continuous session and open for the transaction of business during all business hours of each and every day, excepting Sundays

and legal holidays. All sessions shall be open to the public, and shall stand and be adjourned without further notice thereof on its record. All proceedings of the Commission shall be shown on its record of proceedings, which shall be a public record, and shall contain a record of each case considered and the award paid or allowed to any employé of the Commission, or to pay any other person for services. Provided, however, that any person in the employ of the Commission who shall divulge any information secured by him in respect to the transactions, property or business of any person, firm, company or corporation, association or joint partnership to any person other than the members of the Commission, shall be guilty of a misdemeanor, and subject to a fine of not less than \$100 or more than \$500, or imprisonment not exceeding 18 months, in the discretion of the Court, and shall thereafter be disqualified from holding any appointment or employment with the Commission. [Id. § 4.]

§ 5. Employés of Commission—Expenses—Offices—Seal—Oath of office.—The Commission may employ a secretary, actuaries, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants, and fix their compensation subject to the written approval of the Governor; such compensation shall be paid out of the appropriation in the State Treasury provided for in this Act. The secretary, actuaries, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants that may be employed shall be entitled to receive their actual necessary expenses while traveling on the business of the Commission. Such expenses shall be itemized and sworn to by the person who incurred the expense, and allowed by the Commission. The Commission shall keep and maintain its main office and such branch offices as it shall deem proper and necessary for the administration of the Act, and shall provide suitable rooms, necessary office furniture, supplies, books, periodicals and maps for the same. All necessary expenses shall be audited and paid out of the appropriation in the State Treasury provided for in this Act. It shall provide itself with a seal for the authentication of its orders, awards and proceedings, upon which shall be inscribed the words "State Industrial Accident Commission, State of Maryland—Official Seal." Each member of the Commission and each person appointed to office or employment by the Commission shall before entering upon the duties of his office or employment take and subscribe the constitutional oath of office. [Id. § 5.]

§ 6. Secretary—Powers and duties.—The Secretary of the Commission shall keep and maintain a full and true record of all proceedings of the Commission, of all documents or papers ordered filed by the Commission or by its rules, of decisions or orders made by any member of the Commission, and of all decisions or orders made by the Commission or approved and confirmed by it and ordered filed, and he shall be responsible to the Commission for the safe custody and preservation of all such documents at its office. He shall have the power to administer oaths in all parts of the State, so far as the exercise of such power is properly incident to the performance of his duty or that of the Commission. He may designate, from time to time, with the approval of the Commission, one of the clerks of the office appointed by the Commission to exercise the powers and duties of the secretary during his absence. Under the direction of the Commission, the secretary shall have general charge of its office, superintend its clerical business and perform such other duties as the Commission may prescribe. [Id. § 6.]

§ 7. Procurement of evidence—Contempt—Immunity.—Each member of the Commission, the Secretary thereof, and any examiner or inspector shall, for the purpose contemplated by this Act, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Maryland as now provided by law, compel the production of pertinent books, payrolls, accounts, papers, records, documents and testimony. If a person in attendance before the Commission or a Commissioner refuse, without reasonable cause, to be examined or to answer a legal and pertinent question, or to produce a book or paper when ordered to do so by the Commission, the Commission may apply to any Judge of the Supreme Bench of Baltimore City, or of the Circuit Court of any county, upon proof by affidavit of the fact, for a rule or order returnable in not less than two or more than five days, directing such person to show cause before the judge who made the order, or any other judge aforesaid, why he should not be committed to jail; upon the return of such order, the judge before whom the matter and such person shall come on for a hearing shall examine under oath such person, and such person shall be given an opportunity to be heard; and if the judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or to answer a legal or pertinent question, or to produce a book or paper which he was ordered to bring or produce, he may forthwith commit the offender to jail, there to remain until he submits to do the act which he was so required to do, or is discharged according to law.

No person shall be excused from testifying or from producing any books or papers or documents in any investigation or inquiry by or upon any hearing before the Commission or any Commissioner, when ordered to do so by the Commission or its Secretary, upon the ground that the testimony or evidence, books, papers, or documents required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall, under oath, have, by order of the Commission or a Commissioner or its inspector or examiner, testified to or produced documentary evidence of; provided, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. [Id. § 7.]

§ 8. Service of subpoenas—Fees and mileage—Compensation of witnesses—Depositions.—Each officer who serves such subpoena shall receive the same fee as the Sheriff would receive in the county or city where said witness is subpoenaed, and each witness who appears in obedience to a subpoena, before the Commission or an inspector or an examiner, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the Circuit Courts of the counties or the Common Law Courts of Baltimore City, as of the place where he gives his testimony, which shall be audited and paid from the State Treasury in the same manner as other vouchers approved by any member of the Commission and the Secretary. No witness subpoenaed at the instance of a party other than the Commission, or an inspector or examiner, shall be entitled to compensation from the State Treasury, unless the Commission shall certify that his testimony was material to the matter investigated. In an investigation, the Commission may cause depositions of witnesses residing within or without the State to be taken in the manner prescribed by

law for like depositions taken in cases pending before the Circuit Courts of the counties or the Common Law Courts of Baltimore City, as is now or hereafter may be provided by law. [Id. § 8.]

§ 9. Procedure and regulation thereof by Commission.—Subject to the provisions of this Act, the State Industrial Accident Commission shall adopt reasonable and proper rules to govern its procedure, which procedure shall be as summary and simple as reasonably may be. It shall regulate and provide for the kind and character of notices, and the services thereof, and in cases of injury by accident to employees, the nature and extent of the proofs and evidence and the method of taking and furnishing the same for the establishment of the right to compensation. It shall determine the nature and forms of application of those claiming to be entitled to benefits or compensation, and shall regulate the method of making investigations, physical examinations and inspections and prescribe the time within which adjudications and awards shall be made; provided, always, that such rules and regulations shall conform to the provisions of this Act. [Id. § 9.]

§ 10. Manner of investigation.—The Commission shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than as herein provided, but may make the investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this Act. [Id. § 10.]

§ 11. Transcript of testimony.—A transcribed copy of the evidence and proceedings or any specific part thereof, by any investigation taken by a stenographer appointed by the Commission, being certified and sworn to by such stenographer, to be a true and correct transcript of the testimony, or of a particular witness, or any specific part thereof, or to be a correct transcript of the proceedings had on such investigation so purporting to be taken and subscribed, may be received in evidence by the Commission, with the same effect as if such stenographer were present and testified to the facts certified. A copy of such transcript shall be furnished on demand to any party in interest upon payment of the fee therefor, as provided for transcripts in the Circuit Courts of the counties or the Common Law Courts of Baltimore City. [Id. § 11.]

§ 12. Blank forms.—The Commission shall prepare and furnish, free of cost, blank forms and provide in its rules for their distribution so that the same may be readily available, of applications for benefits or compensation notices, to employers, proof of injury or death, or medical attendance, of employment and wage earnings and such other blanks as may be deemed proper and advisable, and it shall be the duty of employers to constantly keep on hand a sufficient supply of such blanks. [Id. § 12.]

§ 13. Annual report to governor.—Annually, on or before the first day of January, the State Industrial Accident Commission shall make a report to the Governor, which shall include a statement of the number of awards made by it, the causes of the accidents leading to the injuries for which the awards were made, and a detailed statement of the expenses of the Commission and the condition of the State Accident Fund, together with any other matters which the Commission deems proper to report to the Governor, including any recommendations it may desire to make. [Id. § 13.]

CIRCUMSTANCES UNDER WHICH COMPENSATION BECOMES DUE

§ 14. Enumeration of conditions.—Every employer subject to the provisions of this Act shall pay or provide as required herein compensation according to the schedules of this Act for the disability or death of his employé resulting from an accidental personal injury sustained by the employé arising out of and in the course of his employment, without regard to fault as a cause of such injury, except where the injury is occasioned by the wilful intention of the injured employé to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employé while on duty. Where the injury is occasioned by wilful intention of the injured employé to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employé while on duty, neither the injured employé nor any dependent of such employé shall receive compensation under this Act.

The liability prescribed by the last preceding paragraph shall be exclusive, except that if an employer fail to secure the payment of compensation for his injured employés and their dependents as provided in this Act, an injured employé or his legal representative in case death results from the injury, may, at his option, elect to claim compensation under this Act, or to maintain an action in the courts for damages on account of such injury; and in such an action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow-servant or that the employé assumed the risk of his employment, or that the injury was due to the contributory negligence of the employé. If an employer, besides employing workmen in extra-hazardous employment within the meaning of this Act, shall also employ workmen in employments not extra-hazardous, the provisions of this Act shall apply only to the extra-hazardous employments within the meaning of this Act and the workmen employed therein, except as provided in Section 33 of this Act. [Id. § 14; Acts 1916, c. 597.]

INSURANCE

§ 15. Methods and necessity—Criminal failure to insure.—The employer shall secure compensation to his employés in one of the following ways:

(1) By insuring and keeping insured the payments of such compensation in the State Accident Fund, or

(2) By insuring and keeping insured the payments of such compensation with any stock corporation or mutual association authorized to transact the business of Workmen's Compensation Insurance in this State.

(3) Any such employer who does not, with the approval of said Commission, voluntarily insure the payment of the compensation by one of the methods designated in the preceding paragraphs of this section, must furnish satisfactory proof to the Commission of his financial ability to pay such compensation himself, in which case the Commission may, at any time and from time to time in its discretion, require the deposit with the Commission of securities, such as are accepted by the equity courts of Baltimore city for the investment of trust funds and in an amount or amounts to be determined by the Commission, to secure the liability of the employer to pay the compensation specified in this Act; and in order to be informed as to the continued financial responsibility of any such employer the Commission may require reports from

him annually or at such other times as the Commission may deem necessary or advisable, and may examine such employer under oath or make such other examination of his business as the Commission may determine. If he should fail to furnish such satisfactory proof, or give bond, or deposit such securities as required by the Commission, or if he should at any time fail to render satisfactory reports to the Commission or otherwise satisfy the Commission of his continued financial ability to pay the compensation himself, he shall be subject to the provisions of the first paragraph of this section of this Act, and shall be required by the Commission to insure as provided in the first paragraph of said this section, unless he at once insure voluntarily as provided in the second paragraph of this section.

Any employer subject to the provisions of this Act who, after November first, nineteen hundred and fourteen, fails or refuses to submit to said Commission, as provided in the next succeeding paragraphs, the method he desires to adopt for assuring compensation, or who shall fail to secure insurance by one of such methods, shall be guilty of a misdemeanor, and shall be subject to a fine of not less than five hundred nor more than five thousand dollars. The Court may, in its discretion, remit any such penalty, provided the employer in default assures the compensation as provided in this section; and provided, further, that he has paid or secured to be paid any compensation or other benefits under this Act which may have been awarded against him. [Acts 1914, c. 800, § 15; Acts 1916, c. 597.]

STATE ACCIDENT FUND

§ 16. Creation and administration of fund.—The State Industrial Accident Commission is hereby authorized and directed to create and establish a fund, to be known as the "State Accident Fund," for the purpose of insuring employers against liability under this Act, and to their employes and their dependents the payment of the compensation specified in this Act. Such fund shall consist of all premiums or taxes received and paid into the fund and of property and securities acquired and interest earned through the use of moneys belonging to the fund. Said fund shall be administered by the Commission, and shall be applicable to the payment of losses sustained on account of insurance, and to the payment of expenses in the manner provided in this Act. [Acts 1914, c. 800, § 16; Acts 1916, c. 597.]

§ 17. Premiums.—For the purpose of creating such State Accident Fund, each employer insured in this fund or required to be insured therein by this Act shall pay into the State Treasury the premiums of liability based upon and being such percentage of the payroll of such employer as may have been determined and published by the Commission, and be then in effect. The premiums shall be paid every four months, and shall be the prescribed percentage of the total wages paid to all employes subject to the Act for such preceding four months' period. The State Treasurer shall issue his receipt for any sums paid him hereunder in duplicate, the original to be delivered to the person, firm or corporation or other employer paying the same, and the duplicate filed with the Commission; provided, however, that in order to create a fund available upon the application of this Act as aforesaid on November first, one thousand nine hundred and fourteen, the payments for the months of November, one thousand nine hundred and fourteen, to February, inclusive, one thousand nine hundred and fifteen, shall be made on or before November first, one thousand nine hundred and fourteen, and be preliminarily based upon the

payroll of the operations of the first four months of the year one thousand nine hundred and fourteen. If any employer be found to have overpaid for such four months he may deduct such overpayment from the next succeeding four months' payment made to the fund; if any employer be found to have underpaid for such four months, he shall pay the deficiency with the payment made by him after the end of said four months. [Acts 1914, c. 800, § 17; Acts 1916, c. 597.]

§ 18. Computation of premiums—Payrolls.—If a single establishment of work insured in the State Accident Fund comprises several occupations listed in Section 32 of this Act, the premium shall be computed according to the payroll of each occupation, if clearly separable; otherwise an average rate of premium shall be charged for the entire establishment, taking into consideration the number of employees and the relative hazards. In computing the payroll the entire compensation received by every workman employed in extra-hazardous work and insured in the State Accident Fund, within the meaning of this Act, shall be included, whether it be in the form of salary, wage, piece work, overtime, or any allowance in the way of profit-sharing premium or otherwise, and whether payable in money, board or otherwise. Provided the money value of board and similar advantages shall have been fixed by parties at the time of hiring. [Acts 1914, c. 800, § 18.]

§ 19. Classification of industries.—It shall be the duty of the Commission to classify any industries subject to this Act mentioned or not mentioned which are insured in the State Accident Fund. And the Commission shall have power on or before the first day of January of each year to reclassify such industries, or oftener, if, in the opinion of the Commission, the same should be deemed just and advantageous; or to create additional classifications with respect to their respective degrees of hazard and determine the risk of the different classes, and fix the rates of premium for each class, according to the risks of the same sufficiently large to guarantee a workmen's compensation fund from year to year. It shall be the duty of the Commission in determining the rates, in order to create a fund sufficiently large to guarantee a workmen's compensation fund from year to year to also reclassify from time to time the industries or occupations, in order that there may be a flexible adjustment of the rates as the hazard fluctuates, and to use all means in their power, through the rate adjustment, to lessen the opportunities for injuries to the workmen. The classification so determined and the rates of premium established shall be applicable for such year; and based on each one hundred dollars of the gross annual payroll of each employer in any class; provided, also, that for the purpose of this Act the pay of the employé partly within and partly without the State shall be deemed to be such proportion of the total pay of such employee as his service within the State bears to his services outside the State. [Id. § 19.]

§ 20. Uniform form payroll—Payments into fund—Receipts and certificates.—The Commission may establish and require all employers insured in the State Accident Fund to install and maintain a uniform payroll. The Commission shall ascertain and establish the amounts to be paid into and out of the Accident Fund, issue proper receipts for moneys received, and certificates for benefits accrued and accruing from the State Accident Fund. [Id. § 20.]

§ 21. Report to Commission—Failure to report—False report.—Every employer subject to the operation and effect of this Act, who shall insure

in the State Accident Fund, shall every four months submit a report to the Commission herein created, according to the regulations and requirements it may prescribe, of his payroll for four months then ending. A failure to comply with this section shall subject the employer to an extra contribution of one hundred dollars, to be collected by the Commission in a civil action in its name. The amount collected under this section shall be paid into the State Accident Fund.

Any employer who shall, with fraudulent intent, misrepresent to the Commission the amount of payroll upon which the premium under this Act is based, shall be liable to the Commission in ten times the amount of the difference in the premium paid and the amount the employer should have paid. The liability to the Commission under this provision shall be enforced in a civil action in the name of the Commission. All sums collected under this section shall be paid into the State Accident Fund. [Id. § 21.]

§ 22. Default in payment—Remedies.—If an employer shall default in any payment required to be made by him to the State Accident Fund, the amount due from him shall be collected by civil action against him in the name of the State of Maryland, and it shall be the duty of the Commission, on the first Monday of each month, after November first, nineteen hundred and fourteen, to certify to the Attorney-General of the State the names and residences, or places of business, of all employers known to the Commission to be in default for such payment or payments for a longer period than five days and the amount due from each employer, and it shall then be the duty of the Attorney-General forthwith to bring or cause to be brought against each employer, a civil action in the proper Court for the collection of such amount so due, and the same, when collected, shall be paid into the State Accident Fund, and each employer's compliance with the provisions of this Chapter, requiring payments to be made to the State Accident Fund, shall date from the time of the payment of said money so collected as aforesaid to the said Commission for credit to the State Accident Fund. [Id. § 22.]

§ 23. Creation of surplus—Maintenance of reserve.—Ten per centum of the premiums collected from employers insured in the State Accident Fund shall be set aside by the Commission for the creation of a surplus until such surplus shall amount to the sum of fifty thousand dollars, and thereafter five per centum of such premiums until such time as, in the judgment of said Commission, such surplus shall be sufficiently large to cover the catastrophe hazard. The Commission shall also set up and maintain a reserve adequate to meet anticipated losses and carry all claims and policies to maturity. [Id. § 23.]

§ 24. Custody of fund and disbursements—State treasurer—Bond.—The Treasurer of the State shall be the custodian of the State Accident Fund, and all disbursements therefrom shall be paid by him upon order or voucher, approved and signed by the chairman or acting chairman and secretary of the Commission, and directed to the Comptroller of the State, who shall draw his warrant therefor. It shall be the duty of the Treasurer to keep and maintain the fund herein created separate and distinct from other State funds. On and after January 1st, 1915, the obligation in the bond of the State Treasurer shall contain a provision securing the protection of this fund. [Id. § 24.]

§ 25. Investment of fund—Deposits.—Whenever and as often as there shall be in the hands of the Treasurer, any sum belonging to the State Ac-

accident Fund not likely, in the opinion of the Commission, to be required for immediate use, it shall be the duty of the Board of Public Works, when called upon by the Commission, to invest the same in interest-bearing securities, such as are accepted by the Equity Courts of Baltimore City for the investment of trust funds, and when and as it may become necessary or expedient to use the moneys so loaned or invested the Board of Public Works shall, when called upon by the Commission, collect or sell or otherwise realize upon any such loan or investment, and any interest accruing upon any such loan or investment as well as any interest received upon the deposit of moneys belonging to said fund shall be credited to said fund.

The State Treasurer may deposit any portion of the State fund not needed for immediate use, in the manner and subject to all the provisions of law respecting the deposit of other State funds by him. Interest earned by such portion of the State Accident Fund deposited by the State Treasurer shall be collected by him and placed to the credit of the fund. [Id. § 25.]

§ 26. Withdrawal of employer from fund.—Any employer, after entering the State Accident Fund, may withdraw from said fund after the period of one year upon giving sixty (60) days' notice of his intention so to do, and upon paying all arrears, if any, of premiums due the said fund, and upon assuring compensation to his employees by one of the other methods specified in the Act. [Id. § 26; Acts 1916, p. 779, c. 379.]

§ 27. Administration expenses—Special tax for maintenance of Commission.—The entire expense of conducting and administering the State Accident Fund, as likewise all other expenses of the State Industrial Accident Commission, shall be paid in the first instance by the State out of the moneys appropriated for the maintenance of the State Industrial Accident Commission and the payment of the salaries and expenses of said Commission and its officers and employees. In the month of January, nineteen hundred and eighteen, and annually thereafter in such month the Commission shall ascertain the just expense incurred by the Commission during the preceding calendar year, in conducting and in the administration of the State Accident Fund, by including the salaries of the superintendent of said fund and such other employees of the Commission whose services were rendered exclusively to said fund, and all other expenses incurred exclusively for said fund; and the amount of such salaries and expenses shall be chargeable to the State Accident Fund. And if there be employees of the Commission, other than the members themselves and the secretary, whose time is devoted partly to the general work of the Commission and partly to the work of the State Accident Fund, and in case there are any other expenses which are incurred jointly on behalf of the general work of the Commission and the State Accident Fund, an equitable apportionment of the salaries of such employees and expenses shall be made by the Commission and the part thereof which is applicable to the State Accident Fund shall likewise be chargeable thereto; and the Commission shall authorize, in the same manner as other disbursements from the State Accident Fund are authorized, the whole amount so chargeable to the State Accident Fund to be transferred from said fund by the treasurer to the State Treasury to reimburse the State for the moneys so appropriated and expended in conducting and administering the State Accident Fund for the calendar year ending December thirty-first, nineteen hundred and seventeen, and for each calendar year thereafter.

As soon as practicable after January first, nineteen hundred and eighteen, and annually thereafter, the Commission shall ascertain as fully and accurately as possible the total payroll of all the employers of this State, subject to the provisions of this Act, for the preceding calendar year, whether insured in the State Accident Fund, any stock company, or mutual association, or self-insured, and shall also calculate and ascertain the amount paid by the State for administrative expenses of the State Industrial Accident Commission during said preceding calendar year, excluding the amount chargeable to the State Accident Fund under the preceding paragraph of this section. The Commission shall then calculate and determine the percentage which the total amount of such salaries and expenses, other than the amount chargeable to the State Accident Fund, bore to the total payroll, ascertained as aforesaid for that year, of all the employers of this State subject to the provisions of this Act; and the percentage so calculated and determined shall be assessed against all such employers carrying their own insurance in proportion to their several payrolls, and all insurance carriers, including the State Accident Fund, in proportion to the aggregate payroll of employers insured therewith, as a special tax for the maintenance of the State Industrial Accident Commission, other than for conducting and administering the State Accident Fund, for the calendar year ending December thirty-first, nineteen hundred and seventeen, and for each calendar year thereafter; provided, however, that the total amount to be assessed against and paid by such insurance carriers and self-insurers shall not exceed sixty thousand dollars for any one year.

Payment of said taxes may be enforced by civil action in the name of the State of Maryland, and the amounts so assessed and collected by the Commission shall be paid into the State Treasury to reimburse the State for this portion of the expense of administering the Workmen's Compensation Law. And the Commission shall be and it is hereby clothed with such power and authority to examine payrolls and require reports from employers and insurance carriers as may be reasonable and necessary to carry out the provisions of this section and to adopt rules and regulations in regard thereto. [Acts 1914, c. 800, § 27; Acts 1916, c. 597.]

§ 28. Distribution of fund if article repealed.—If this Act shall be hereafter repealed, all moneys which are in the State Accident Fund at the time of the repeal, shall be subject to such disposition as may be provided by the Legislature, and in default of such legislative provision, distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing. [Acts 1914, c. 800, § 28.]

CORPORATE INSURANCE

§ 29. Insurance contracts subject to Act—Supervision of rates of private companies.—Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this Act. No company or association shall enter into any such policy of insurance until such company or association shall first obtain from the Insurance Commissioner of Maryland a license of authority for the purpose, which said Commissioner of Insurance shall have full power and authority from time to time to determine the adequacy of its or their premium rates for carrying compensation insurance as provided

in this law, and until the form of such policy shall have been approved by the State Industrial Accident Commission; and said Insurance Commissioner shall have full power and authority to require said insurance companies to establish and maintain adequate rates to cover respective risks to which their policies are applicable under the provisions of this Act. Any person violating the provisions of this section shall be subject to a fine of not less than one hundred, nor more than one thousand dollars for each offense. [Id. § 29.]

§ 30. Requisites of policies—Cancellation.—Every policy of insurance covering the liability of the employer for compensation, issued by a stock company or by a mutual association authorized to transact workmen's compensation insurance in this State, shall contain a provision setting forth the right of the Commission to enforce in the name of the State of Maryland for the benefit of the person entitled to the compensation insured by the policy, either by filing a separate application or by making the insurance carrier a party to the original application, the liability of the insurance carrier in whole or in part for the payment of such compensation; provided, however, that payment in whole or in part of such compensation, by either the employer or the insurance carrier, shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

Every such policy shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; the jurisdiction of the employer shall, for the purpose of this Act, be the jurisdiction of the insurance carrier, and that the insurance carrier shall, in all things, be bound by and subject to the orders, findings, decisions or awards rendered against the employer for the payment of compensation under the provisions of this Act.

Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer shall not relieve the insurance carrier from the payment of compensation for injuries or death sustained by an employee during the life of such policy.

Every contract or agreement of an employer, the purpose of which is to indemnify him from loss or damage on account of the injury of an employee by accidental means, or on account of the negligence of such employer or his officer, agent or servant, if engaged in extra hazardous employment, shall be absolutely void unless it shall also cover liability for the payment of the compensation provided for by this Act.

No contract or insurance issued by a stock company or mutual association, against liability arising under this Act, shall be canceled within the time limited in such contract for its expiration until at least ten days after notice of intention to cancel such contract, on a date specified in such notice, shall be filed in the office of the Commissioner and also served on the employer. Such notice shall be served on the employer by delivering it to him or by sending it by mail, by registered letter, addressed to the employer at his or its last known place of residence; provided, that if the employer be a partnership, then such notice may be so given to any one of the partners, and if the employer be a corporation, then the notice may be given to any agent or officer of the corporation upon whom legal process may be served. [Id. § 30.]

§ 31. Does not apply to existing policies.—Nothing herein shall affect any existing contract of policy of employer's liability insurance, or the liability of any mutual insurance association, or any arrangement now existing between employers and employees, providing for the payment to such employees, their families, dependents or representatives of sick, accident or death benefits in addition to the compensation provided for by this Act; but liability for the compensation specified in this Act shall not be reduced or affected by any insurance, contribution or other benefit whatsoever, due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any such insurance or other contract, have the right to recover the compensation directly from the employer. [Id. § 31.]

APPLICATION OF ARTICLE—EXTRA-HAZARDOUS EMPLOYMENTS

§ 32. Enumeration.—Compensation provided for in this Act shall be payable for injuries sustained or death incurred by employees engaged in the following extra hazardous employments:

1. The operation, including construction and repair of railways operated by steam, electric or other motive power, street railways and incline railways, but not in their construction, when constructed by any person other than the company which owns or operates the railways, including work of express, sleeping, parlor and dining car employees on railway trains.

2. Construction and operation of railways not included in paragraph one.

3. The operation, including construction and repair of car shops, machine shops, steam and power plants, and other works for the purposes of any such railway, or used or to be used in connection with it when operated, constructed or repaired by the company which owns or operates the railway.

4. The operation, including construction and repair, of car shops, machine shops, steam and power plants, not included in paragraph 3.

5. The operation, including construction and repair, of telephone lines and wires for the purpose of the business of a telephone company, or used or to be used in connection with its business, when constructed or operated by the company.

6. The operation, including construction and repair, of telegraph lines and wires for the purposes of the business of a telegraph company, or used or to be used in connection with its business, when constructed or operated by the company.

7. Construction of telegraph and telephone lines not included in paragraphs 5 and 6.

8. The operation, within or without the State, including repair of vessels other than vessels of other States or countries used in interstate or foreign commerce, when operated or repaired by the company.

9. Shipbuilding, including construction and repair in a shipyard or elsewhere, not included in paragraph 8.

10. Longshore work, including the loading or unloading of cargoes or parts of cargoes of grain, coal, ore, freight, general merchandise, lumber or other products or materials, or moving or handling the same on any dock, platform or place, or in any warehouse or other place of storage.

11. Subaqueous or caisson construction and pile driving.

12. Construction, installation or operation of electric light and electric power lines, dynamos or appliances and power transmission lines.

13. Paving, sewer and subway construction, work under compressed air, excavations, tunneling and shaft sinking, well digging, laying and repair of underground pipes, cables and wires, not included in paragraph 5 of this section.

14. Lumbering, logging, river-driving, rafting, booming, saw mills, shingle mills, lath mills, manufacture of veneer and of excelsior, manufacture of staves, spokes or headings.

15. Pulp and paper mills.

16. Manufacture of furniture, interior woodwork, organs, pianos, piano actions, canoes, small boats, coffins, wicker and rattan ware, upholstering, manufacture of mattresses or bed springs.

17. Planing mills, sash and door factories, manufacture of wooden and corrugated paper boxes, cheese boxes, mouldings, window and door screens, window shades, carpet sweepers, wooden toys, articles and wares or baskets.

18. Mining, reduction of ores and smelting, preparation of metals or minerals.

19. Quarries; sand, shale, clay or gravel pits, lime kilns; manufacture of brick, tile, terra-cotta, fire-proofing, or paving blocks, manufacture of calcium carbide, cement, asphalt or paving material.

20. Manufacture of glass, glass products, glassware, porcelain or pottery.

21. Iron, steel or metal foundries; rolling mills; manufacture of castings, forgings, heavy engines, locomotives, machinery, safes, anchors, cables, rails, shafting, wires, tubing, pipes, sheet metal boilers, furnaces, stoves, structural steel, iron or metal.

22. Operation and repair of stationary engines and boilers, not included in other paragraphs of this section.

23. Manufacture of small castings or forgings, metal wares, instruments, utensils and articles, hardware, nails, wire goods, screens, bolts, metal beds, sanitary water, gas or electric fixtures, light machines, typewriters, cash registers, adding machines, carriage mountings, bicycles, metal toys, tools, cutlery instruments, photographic cameras and supplies, sheet metal products, buttons.

24. Manufacture of agricultural implements, threshing machines, traction engines, wagons, carriages, sleighs, vehicles, automobiles, motor trucks, toy wagons, sleighs, or baby carriages.

25. Manufacture of explosive and dangerous chemicals, corrosive acids or salts, ammonia, gasoline, petroleum, petroleum products, celluloid, gas, charcoal, gun powder or ammunition.

26. Manufacture of paint, color, varnish, oil, japs, turpentine, printing ink, printers' rollers, tar, tarred, pitched or asphalted paper.

27. Distilleries, breweries; manufacture of spirituous or malt liquors, alcohol, wine, mineral water or soda waters.

28. Manufacture of drugs and chemicals, not specified in paragraph 25, medicines, dyes, extracts, pharmaceutical or toilet preparations, soaps, candles, perfumes, non-corrosive acids or chemical preparations, fertilizers, including garbage disposal plants; shoe blackening or polish.

29. Milling; manufacture of cereals or cattle foods, warehousing; storage; operation of grain elevators.

30. Packing houses, abattoirs, manufacture or preparation of meats or meat products of glue.

31. Tanneries.

32. Manufacture of leather goods and products, belting, saddlery, harness, trunks, valises, boots, shoes, gloves, umbrellas, rubber goods, rubber shoes, tubing, ties or hose.

33. Canning or preparation of fruit, vegetable, fish or food-stuffs; pickle factories and sugar refineries.

34. Bakeries, including manufacture of crackers and biscuits, manufacture of confectionery, spices or condiments.

35. Manufacture of tobacco, cigars, cigarettes or tobacco products.

36. Manufacture of cordage, ropes, fibre, brooms or brushes, manilla or hemp products.

37. Flax mills; manufacture of textiles or fabrics, spinning, weaving and knitting manufactories; manufacture of yarn, thread, hosiery, cloth, blankets, carpets, canvas, bags, shoddy or felt.

38. Manufacture of men's or women's clothing, white wear, shirts, collars, corsets, hats, caps, furs or robes.

39. Power laundries; dyeing, cleaning or bleaching.

40. Printing, photo-engraving, stereotyping, electrotyping, lithographing, embossing; manufacture of stationery, paper, cardboard boxes, bags, or wall paper; and book-binding.

41. The operation, otherwise than on tracks, on streets, highways or elsewhere of cars, trucks, wagons or other vehicles, and rollers and engines propelled by steam, gas, gasoline, electric, mechanical or other power, or drawn by horses and mules.

42. Stone cutting or dressing; marble works; manufacture of artificial stones; steel building and bridge construction; installation of elevators, fire escapes, boilers, engines or heavy machinery; brick-laying, tile-laying, mason work, stone setting, concrete work, plastering; and manufacture of concrete blocks; structural carpentry; painting, decorating or renovating; sheet metal work; roofing; construction, repair and demolition of buildings and bridges; plumbing, sanitary or heating engineering; installation and covering of pipes or boilers.

43. In addition to the employments set out in the preceding paragraphs, this Act is intended to apply to all extra hazardous employments not specifically enumerated herein. [Id. § 32; Acts 1916, c. 597.]

§ 33. Extension by joint election—Minors—Interstate commerce.—

Any employer, his employee or employees engaged in works not extra hazardous, within the meaning of this Act, may, by their joint election, filed with the Commission, accept the provisions of this Act, and such acceptance, when approved by the Commission, shall subject them to the provisions of this Act to all intents and purposes as if they had been originally included in its terms.

Any workman of the age of sixteen years and upwards may himself exercise the election hereby authorized. The right of election hereby authorized shall be exercised on behalf of any workman under the age of sixteen years by his parents or guardian. Nothing herein shall be construed to apply to workmen of less than the minimum age prescribed by law for the employment of minors in the occupation in which such workman shall be engaged.

The provisions of this Act shall apply to employers and employees engaged in intrastate and also in interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the Congress of the United States, only to the extent that their mutual connec-

tion with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, except that any such employer and any of his workmen only in this State may, with the approval of the Commission, and so far as not forbidden by any Act of Congress, voluntarily accept the provisions of this Act by filing written acceptances with the Commission, which shall subject the acceptors to the provisions of this Act to all intents and purposes as if they had been originally included in its terms. [Acts 1914, c. 800, § 33.]

§ 34. Substitution of federal Act—Presumptive acceptance.—Whenever there shall have been enacted by the Congress of the United States, and shall be in effect, any act providing an exclusive remedy and compensation to employers of common carriers by railroads while employed in interstate or foreign commerce, who sustain personal injury by accident arising out of and in the course of such employment and resulting in disability, or to the dependents of such employees in case such injury results in death, it shall be lawful for any such common carrier by railroad in this State and its employees or any of them, by agreement between such employer and employees, to provide for the payment by the employer of compensation in the amounts at the times and in the manner specified in said Act of Congress to any employee who, while employed by such employer in commerce or business wholly within this State, sustains personal injury by accident arising out of and in the course of his employment and resulting in his disability, or to the dependents, as defined in said Act of Congress, of such employee in case such injury results in his death; and in and by such agreement to stipulate and agree that, except as provided therein, such employer shall not be civilly liable for any injury to or death of any such employee resulting from any such accident.

If any such employer shall file with the Commission an instrument in writing under its corporate seal, offering to enter into such an agreement with all and any of its employees in this State and referring to such Act of Congress, and shall cause notice of such offer filed to be published once each week for three successive weeks following the date of such filing in a newspaper published in each county in this State, through which such employer runs regularly any freight or passenger train, and in two newspapers published in the City of Baltimore, if such employer runs regularly any freight or passenger train into or through said city, every employee of such employer shall be conclusively presumed to accept such offer of the employer and to have entered into such offer of the employer and to have entered into such agreement, unless such employee shall, within thirty days after the filing of such offer by the employer, file with the Commission a notice in writing or statement declining such offer; and at the expiration of said period of thirty days the term of said agreement shall be mutually binding upon the employer and upon every employee not so declining, but any employee or the employer may, at any time, by filing with the Commission not less than thirty days' notice in writing of his or its intention so to do, terminate such agreement upon this or its part as to all accidental injuries occurring after the expiration of such notice. [Id. § 33½.]

§ 35. State, county, city or municipality.—Whenever the State, county, city or any municipality shall engage in any extra hazardous work, within the meaning of this Act, in which workmen are employed for wages, this Act

shall be applicable thereto. Whenever and so long as by State law, City Charter or Municipal Ordinance, provision equal or better than that given under the terms of this Act is made for municipal employees injured in the course of employment such employees shall not be entitled to the benefits of this Act. [Id. § 34.]

CLAIMS AND COMPENSATION—BENEFITS

§ 36. **Schedule.**—Each employé (or in case of death his family or dependents) entitled to receive compensation under this Article shall receive the same in accordance with the following schedule, and except as in this Article otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.

(1) **Permanent total disability.**—In case of total disability adjudged to be permanent, fifty per centum of the average weekly wages shall be paid to the employé during the continuance of such total disability, exclusive of the first week, not to exceed a maximum of twelve dollars per week and not less than a minimum of five dollars per week, unless the employé's established weekly wages are less than five dollars per week at the time of the injury, in which event he shall receive compensation in an amount equal to his average weekly wages, but not to exceed a total of \$5,000.00. Loss of both hands, or both arms, or both feet or both legs, or both eyes, or of any two thereof, shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

(2) **Temporary total disability.**—In case of temporary total disability fifty per centum of the average weekly wages shall be paid to the employé during the continuance thereof, but not in excess of a maximum of twelve dollars per week and not less than a minimum of five dollars per week, in which event he shall receive compensation equal to his full wages; but in no case to continue more than six years from the date of the injury or to exceed thirty-seven hundred and fifty dollars in the aggregate.

(3) **Permanent partial disability.**—In case of disability partial in character, but permanent in quality, the compensation shall be fifty per centum of the average weekly wages, in no case to exceed twelve dollars per week or more than three thousand dollars in the aggregate, and shall be paid to the employés for the period named in the schedule as follows:

Thumb—For the loss of a thumb, fifty weeks.

First Finger—For the loss of a first finger, commonly called the index finger, thirty weeks.

Second Finger—For the loss of a second finger, twenty-five weeks.

Third Finger—For the loss of a third finger, twenty weeks.

Fourth Finger—For the loss of the fourth finger, commonly called the little finger, fifteen weeks.

The loss of the second or distal phalange of the thumb shall be considered to be equal to the loss of one-half of such thumb; the loss of more than one-half of such thumb shall be considered to be equal to the loss of the whole thumb. The loss of the third or distal phalange of any finger shall be considered to be equal to the loss of one-third of such finger. The loss of the middle or second phalange of any finger shall be considered to be equal to the loss of two-thirds of such finger. The loss of more than the middle and distal phalange of any finger shall be considered to be equal to the loss of the whole of

such finger; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

Great Toe—For the loss of a great toe, twenty-five weeks.

Other Toes—For the loss of one of the toes other than the great toe, ten weeks.

Hand—For the loss of a hand, one hundred and fifty weeks.

Arm—For the loss of an arm, two hundred weeks.

Foot—For the loss of a foot, one hundred and fifty weeks.

Leg—For the loss of a leg, one hundred and seventy-five weeks.

Eye—For the loss of an eye, one hundred weeks.

Loss of Use—Permanent loss of the use of a hand, arm, foot, such hand, arm, foot, leg or eye, and for the loss of the fractional part of the vision of either one or both eyes the injured employee shall be compensated in like proportion to the compensation for total loss of vision.

Amputations—Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand. Amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm. Amputation at or above the knee shall be considered as the loss of the leg.

The compensation for the foregoing specific injuries shall be in lieu of all other compensations, except the benefits provided in Section 37 of this Article.

Other Cases—In all other cases in this class of disability the compensation shall be fifty per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, if less than before the accident (but not to exceed twelve dollars per week), payable during the continuance of such partial disability, but not to exceed \$3,000.00, and subject to reconsideration of the degree of such impairment by the commission on its own motion or upon application of any party in interest.

In all cases where there has been an amputation of a part of any member of the body herein specified, or the loss of the use of any part thereof, for which compensation is not specially provided herein, the Commission shall allow compensation for such proportion of the total number of weeks allowed for the amputation or the loss of the use of the entire member, as the affected or amputated portion thereof bears to the whole.

(4) Temporary partial disability.—In case of temporary partial disability, except the particular cases mentioned in subdivision three of this section, an injured employé shall receive fifty per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, if less than before the accident, during the continuance of such partial disability, but not in excess of three thousand five hundred dollars, except as otherwise provided in this article.

In case the injury causes death within the period of two years the benefits shall be in the amounts and to the persons following:

If there be no dependents, the disbursements shall be limited to the expenses provided for in Section thirty-seven hereof.

If there are wholly dependent persons at the time of the death, the payment shall be fifty per cent. of the average weekly wages, and to continue for the remainder of the period between the date of the death and eight years after the

date of the injury, and not to amount to more than a maximum of four thousand two hundred and fifty dollars, nor less than a minimum of one thousand dollars.

If there are partly dependent persons at the time of the death, the payment shall be fifty per cent. of the average weekly wages, and to continue for all or such portion of the period of eight years after the date of the injury, as the Commission in each may determine, and not to amount to more than a maximum of three thousand dollars.

The following persons shall be presumed to be wholly dependent for support upon a deceased employé: A wife or invalid husband ("invalid" meaning one physically or mentally incapacitated from earning), a child or children under the age of sixteen years (or over said age if physically or mentally incapacitated from earning), living with or dependent upon the parent at the time of the injury or death.

In all other cases, questions of dependency, in whole or in part, shall be determined in accordance with the facts in each particular case existing at the time of the injury resulting in death of such employé, but no person shall be considered as dependent unless such person be a father, mother, grandfather, grandmother, stepchild or grandchild, or brother or sister of the deceased employé, including those otherwise specified in this section.

Compensation under this Article to alien dependent widows, children and parents, not residents of the United States, shall be the same in amount as is provided in each case for residents, except that at any time within one year after an accident resulting in death the Commission may, in its discretion, convert any payments thereafter to become due to such beneficiaries into a lump sum payment, not in any case to exceed twenty-four hundred dollars, by paying a sum equal to three-fourths of the then value of such payments.

Non-resident alien dependents may be officially represented by the consular officers of the nation of which such alien or aliens may be citizens or subjects, and in such cases the consular officers shall have the right to receive, for distribution to such non-resident alien dependents, all compensation awarded hereunder, and the receipt of such consular officers shall be a full discharge of all sums paid to and received by them. [Id. § 35; Acts 1916, cc. 368, 597.]

§ 37. Medical, surgical and hospital treatment.—In addition to the compensation provided for herein, the employer shall promptly provide for an injured employé such medical, surgical or other attendance or treatment, nurse and hospital services, medicines, crutches and apparatus as may be required by the Commission in an amount not to exceed one hundred and fifty dollars (\$150.00). If the employer fail to provide the same, the injured employé may do so at the expense of the employer. All fees and other charges for such treatment and services shall be subject to regulations by the Commission, and shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living, and in case death ensues from the injury within two years, reasonable funeral expenses shall be allowed, not to exceed the sum of seventy-five dollars (\$75.00). Provided, however, that if there are no dependents and the deceased employé leaves sufficient estate to pay same, all expenses of last sickness and burial shall be paid by said estate and not by the employer or insurance company, or Commission out of the State Accident Fund, as the case may be. The Commission shall have full power to adopt rules and regulations with respect to fur-

nishing medical, nurse, hospital services and medicines to injured employes entitled thereto and for the payment therefor. [Acts 1914, c. 800, § 36; Acts 1916, c. 597, § 37.]

§ 38. Notice of accident—Report to Commission.—Notice of an injury for which compensation is payable under this Act shall be given to the employer within ten days after the accident, and also in case of the death of the employee resulting from such injury, within thirty days after such death. Such notice may be in writing, and contain the name and address of the employee, and state in ordinary language the time, place, nature and cause of the injury, and be signed by him or by a person on his behalf, or in case of death, by any one or more of his dependents, or by a person on their behalf. The failure to give such notice, unless excused by the Commission either on the ground that notice for some sufficient reason could not have been given, or on the ground that the State Accident Fund, insurance company, or employer, as the case may be, has not been prejudiced thereby shall be a bar to any claim under this Act.

Whenever an accident occurs to any employee, it shall be the duty of the employer to at once report that accident, and the injury resulting therefrom, to the Commission, and also to any local representative of the Commission. Such report shall state (a) the time, cause and nature of the accident and injuries, and probable duration of the injury resulting therefrom; (b) whether the accident arose out of or in the course of the injured person's employment; (c) any other matters the rules and regulations of the Commission may prescribe. [Acts 1914, c. 800, § 37.]

§ 39. Application for compensation.—When an employe is entitled to compensation under this Act he shall file with the Commission his application, together with a certificate of the physician, if any, who attended him, within thirty days after the beginning of his disability, for which compensation is claimed, and failure to do so unless excused by the Commission, either on the ground that the insurance carrier or the employer has not been prejudiced thereby, or for some other sufficient reason, shall be a bar to any claim under this Act.

When death results from injury the parties entitled to compensation under this Act, or someone in their behalf, shall make application for same to the Commission, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this Act, certificates of attending physician, if attended by a physician, and such other proof as may be required by the rules of the Commission. [Id. § 38; Acts 1916, c. 597.]

§ 40. Hearing and award.—The Commission shall make or cause to be made such investigation of any claim as it deems necessary, and upon application of either party, shall order a hearing, and within thirty days after a claim for compensation is submitted under this section, or such hearing closed, shall make or deny an award, determining such claim for compensation, and file the same in the office of the Commission, together with a statement of its conclusions of fact and rulings of law. The Commission may, if it deems proper, on the written application of any party in interest, or on its own motion, require the claimant to appear before an arbitration committee appointed by it and consisting of one representative of employees, one representative of employers, and either a member of the Commission or a person specially depu-

tized by the Commission to act as chairman, before which the evidence in regard to the claim shall be adduced and by which it shall be considered and reported upon, with the right of either party to appeal to the Commission from the finding of said arbitration committee on all questions of law and fact.

If changes of circumstances warrant an increase or rearrangement of compensation, like application shall be made. No increase or rearrangement shall be operative for any period prior to application therefor. [Acts 1914, c. 800, § 39.]

§ 41. **Penalty for false claim.**—Any person who shall knowingly secure or attempt to secure larger compensation or compensation for a longer term than he is entitled to, or knowingly secure or attempt to secure compensation when he is not entitled to any, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding five hundred dollars, or imprisoned not exceeding twelve months, or both, in the discretion of the Court, and shall from and after such conviction, cease to receive any compensation. [Id. § 40.]

§ 42. **Medical examination.**—Any employee entitled to receive compensation under this Act is required, if requested by the Commission, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the employee, and as may be provided by the rules of the Commission. If the employee refuse to submit to any such examination, or obstructs the same, his right to compensation shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period. [Id. § 41.]

§ 43. **Second accident—Remarriage of widow—Readjustment of compensation—Desertion of husband or wife.**—Should a further accident occur to an employee already receiving payment under this Act for a disability, or who has been previously the recipient of a lump-sum payment under this Act, his future compensation shall be adjusted according to the other provisions of this Act, and with regard to the combined effect of his injuries and his past receipt of compensation under this Act. In case of the remarriage of a dependent widow of a deceased employee without dependent children, all compensation under this Act shall cease, and further, no widow or widower shall receive any benefits under this Act where the marriage shall have taken place after the person entitled to benefits hereunder shall have been injured, provided there are no dependent children.

If aggravation, diminution or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated in any case, the Commission may, upon the application of any party in interest or upon its own motion, readjust for future application the rate of compensation in accordance with rules in this section provided, or in a proper case, terminate the payments.

A husband or wife of an injured employee, who has deserted said employee for more than one year prior to the time of the injury or subsequently shall not be a beneficiary under this Act.

In case of the remarriage of a dependent widow of a deceased employé without dependent children, all compensation under this Act shall cease, and further no widow or widower shall receive any benefits under this Act where the marriage shall have taken place after the person entitled to benefits hereunder shall have been injured, provided there are no dependent children. [Id. § 42.]

§ 44. **Lump sum to non-resident.**—If a beneficiary shall reside or remove out of the State, and shall have been such non-resident for a period of one year, the Commission may, in its discretion, convert any payments thereafter to become due to such beneficiary into a lump sum payment, not in any case to exceed twenty-four hundred dollars, by paying a sum equal to three-fourths of the then value of such payments. [Id. § 43.]

§ 45. **Deliberate intentional injury.**—If injury or death results to a workman from the deliberate intention of his employer to produce such injury or death, the employee, the widow, widower, child, children or dependents of the employee shall have the privilege either to take under this Act or have cause of action against such employer, as if this Act had not been passed. [Id. § 44.]

§ 46. **Wilful misconduct or intoxication.**—Notwithstanding anything hereinbefore or hereinafter contained, no employee or dependent of any employee shall be entitled to receive any compensation or benefits under this Act on account of any injury to or death of an employee caused by self-inflicted injury, the wilful misconduct or where the injury or death resulted solely from the intoxication of the injured employee. [Id. § 45; Acts 1916, c. 597.]

§ 47. **Average weekly wage—Expected increase.**—If it be established that the injured employee was of such age and experience when injured as that under the natural conditions his wages would be expected to increase, this fact may be considered in arriving at his average weekly wage. [Acts 1914, c. 800, § 46.]

§ 48. **Minors sui juris.**—A minor working at an age legally permitted under the laws of this State shall be deemed sui juris for the purposes of this Act, and no other person shall have any cause of action or right to compensation for any injury to such minor employee unless otherwise herein provided. [Id. § 47.]

§ 49. **Waiting period.**—No compensation shall be allowed for two weeks after the injury is received, except disbursements herein authorized for medical, nurse and hospital services and medicines, and for funeral expenses. [Id. § 48.]

§ 50. **Apportionment of death benefits.**—The benefits in case of death shall be paid to such one or more of the dependents of the decedent for the benefit of all the dependents as may be determined by the Commission, which may apportion the benefits among the dependents in such manner as it may deem just and equitable. The dependent or persons to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof according to their respective claims upon the decedent for support, in compliance with the findings and direction of the Commission. [Id. § 49.]

§ 51. **Lump sum.**—In every case providing for compensation to an employee or his dependent, excepting temporary disability, the Commission may, if in its opinion the facts and circumstances of the case warrant it, allow the compensation to be paid in a partial or total lump sum. [Id. § 50.]

§ 52. **Exemption and non-assignability.**—No money payable under this Act shall, prior to issuance and delivery of the warrant or voucher therefor, be capable of being assigned, charged or taken in execution or attachment. [Id. § 51.]

§ 53. **Waiver—Contribution to insurance premium.**—No employer or employee who is subject to the provisions of this Act shall exempt himself

from the burden or waive the benefit of this Act by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be pro tanto void. No agreement by such employee to pay any portion of the premium paid by such employer shall be valid, and any employer who deducts any portion of such premium from the wages or salary of any employee entitled to the benefits of this Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than two hundred dollars for each offense. [Id. § 52.]

§ 54. **Continuing jurisdiction.**—The powers and jurisdiction of the Commission over each case shall be continuing, and it may from time to time make such modifications or change, with respect to former findings or orders with respect thereto, as in its opinion may be justified. [Id. § 53.]

§ 55. **Injury due to absence of safeguard.**—If an employee shall be injured because of the absence of any safeguard or protection required by the Commission, the employer shall be guilty of a misdemeanor and liable to a fine of not less than \$50.00 or more than \$500.00, to be paid into the State Accident Fund. [Id. § 54.]

APPEALS

§ 56. **Review by circuit court—Duties of attorney general.**—Any employer, employee, beneficiary or person feeling aggrieved by any decision of the Commission affecting his interests under this Act, may have the same reviewed by a proceeding in the nature of an appeal and initiated in the Circuit Court of the county or in the Common Law Courts of Baltimore City having jurisdiction over the place where the accident occurred or over the person appealing from such decision, and the Court shall determine whether the Commission has justly considered all the facts concerning injury, whether it has exceeded the powers granted it by the Act, whether it has misconstrued the law and facts applicable in the case decided. If the Court shall determine that the Commission has acted within its powers and has correctly construed the law and facts, the decision of the Commission shall be confirmed; otherwise it shall be reversed or modified. Upon the hearing of such an appeal the Court shall, upon motion of either party filed with the Clerk of the Court according to the practice in civil cases, submit to a jury any question of fact involved in such case. The proceedings in every such an appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal shall have been served personally upon some member of the Commission within thirty days following the rendition of the decision appealed from. An appeal shall not be a stay. If the decision of the Commission shall be changed or modified, the practice prevailing in civil cases as to the payment of costs and the fees of medical and other witnesses shall apply. Appeal shall lie from the judgment of the Circuit Court of the county or the Common Law Courts of Baltimore City to the Court of Appeals as in other civil cases, and such appeals shall have precedence over all cases except criminal cases.

The Attorney-General shall be the legal adviser of the Commission, and shall represent it in all proceedings whenever so requested by any of the commissioners. In all Court proceedings under or pursuant to this Act, the decision of the Commission shall be prima facie correct and the burden of proof shall be upon the party attacking the same. [Id. § 55.]

§ 57. Costs—No reasonable grounds.—If the Commission or the Court before which any proceedings for compensation or concerning an award of compensation have been brought under this Act, determines that such proceedings have not been so brought upon reasonable ground, it shall assess the whole cost of the proceeding upon the party who has so brought them. Claims for legal services in connection with any claims arising under this Act, and claims for services or treatment rendered or supplies furnished pursuant to Section 36 of this Act, shall not be enforceable unless approved by the Commission. If so approved, such claim or claims shall become a lien upon the compensation awarded, but shall be paid therefrom only in the manner fixed by the Commission. [Id. § 56.]

MISCELLANEOUS PROVISIONS

§ 58. Third person liability—Subrogation of employer.—Where the injury or death for which compensation is payable under this Act, was caused under circumstances creating a legal liability in some person other than the employer, to pay damages in respect thereof, the employee or, in case of death his personal representative or dependents as hereinbefore defined, may proceed either by law against that other person to recover damages or against the employer for compensation under this Act, or in case of joint tortfeasors against both; and if compensation is claimed and awarded or paid under this Act, any employer may enforce for the benefit of the insurance company or association carrying the risk or the State Accident Fund, or himself, as the case may be, the liability of such other person; provided, however, if damages are recovered in excess of the compensation already paid or awarded to be paid under this Act, then any such excess shall be paid to the injured employee or, in case of death, to his dependents, less the employer's expenses and costs of action. [Id. § 57.]

§ 59. Effect of repeal—Time limitations.—If the provisions of this Act relative to compensation for injuries to or death of employees become invalid because of any adjudication, or be repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this Act by lump payment or completed periodical payments, shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death. Provided, that such action be commenced within one year after such repeal or adjudication, but in any such action any sum paid to the employee on account of injury, for which the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have insured himself as provided for in this Act without delinquency, such sums as may have been paid to the employee or his dependents on account of injury or death, shall be credited upon recovery as payment thereon. [Id. § 58.]

§ 59a. Copy of appeal docket to Commission.—It shall be the duty of the Clerk of the Court to which a case is sent on appeal, under the preceding section, to send to the Commission a duly certified copy of the docket entries, and judgment of the Court in each case heard and determined on appeal. [Acts 1916, c. 597, § 59a.]

§ 60. Persons without scope of article.—If any employer shall be adjudicated to be outside the lawful scope of this Act, the Act shall not apply to him or his employees; if any employee shall be adjudicated to be outside

the lawful scope of this Act, because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this Act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. [Acts 1914, c. 800, § 59.]

§ 60a. Principal and sub-contractor.—When any person as a principal contractor, undertakes to execute any work which is a part of his trade, business or occupation which he has contracted to perform, and contracts with any other person as subcontractor, for the execution by or under the subcontractor, of the whole or any part of the work undertaken by the principal contractor, the principal contractor shall be liable to pay to any workman employed in the execution of the work any compensation under this Article which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal contractor, then, in the application of this Article, reference to the principal contractor shall be substituted for reference to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

Where the principal contractor is liable to pay compensation under this section, he shall be entitled to indemnity from any employer who would have been liable to pay compensation to the employee independently of this section, and shall have a cause of action therefor against such employer.

Nothing in this section shall be construed as preventing a workman from recovering compensation under this Article from the subcontractor instead of from the contractor.

Whenever an employé of a subcontractor files a claim under this Article against the principal contractor, the principal contractor shall have the right to join the subcontractor or any intermediate contractors as defendant or codefendant in the case. [Acts 1916, c. 597, § 60a.]

§ 61. Construction.—The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Act; but this Act shall be so interpreted and construed as to effectuate its general purpose. [Id. § 60.]

§ 62. Presumptions.—In any proceeding for the enforcement of a claim for compensation under this Act, it shall be presumed, in the absence of substantial evidence to the contrary:

- (a) That the claim comes within the provisions of this Act.
- (b) That sufficient notice thereof was given.
- (c) That the injury was not occasioned by the wilful intention of the injured employee to bring about the injury or death of himself or of another.
- (d) That the injury did not result solely from the intoxication of the injured employee while on duty. [Id. § 61.]

§ 63. Definitions.—Definitions as used in this Act:

1. "Extra-hazardous employment" means a work or occupation described in Section 32 of this Act.

2. "Employer," except when otherwise expressly stated, means a person, partnership, association, corporation, and the legal representatives of a deceased employer or the receiver or trustee of a person, partnership, association or corporation employing workmen in extra-hazardous employments.

3. "Employee" means a person who is engaged in an extra-hazardous employment in the service of an employer, carrying on or conducting the same upon the premises or at a plant, or in the course of his employment away from the plant of his employer, and shall not include farm laborers. "Farm laborers," as used in this Act, shall mean any employees who, at the time of the accident, are engaged in rendering any agricultural service, including the threshing and harvesting of crops, or who, at the time of the accident, are engaged in service incidental to and in connection with agricultural pursuits or developments, whether the employer be the farmer or other person undertaking or contracting with the farmer to perform any such agricultural service, pursuit or development. This Act shall not apply to farm laborers, domestic servants, nor to country blacksmiths, wheelwrights or similar rural employments, nor in any case where the accident occurred before this Act takes effect, nor to casual employees or any employee whose salary is in excess of two thousand dollars a year, or any employees who are employed wholly without the State.

4. "Employment" includes employment only in a trade, business or occupation carried on by the employer for pecuniary gain.

5. "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this Act, and includes funeral benefits provided therein.

6. "Injury" and "Personal Injury" mean only accidental injuries arising out of and in the course of employment, and such disease or infection as may naturally result therefrom.

7. "Death," when mentioned as a basis for the right to compensation, means only death resulting from such injury.

8. "Average weekly wages" for the purposes of this Act shall be taken to mean the average weekly wages earned by an employee when working on full time.

9. "State Accident Fund" means the State Insurance Fund provided for in Section 16 of this Act.

10. "Child" shall include a posthumous child and a child legally adopted prior to the injury of the employee.

11. "Beneficiary" means a husband, wife, child, children or dependents of an employee in whom shall vest a right to receive payment under this Act. [Id. § 62; Acts 1916, c. 597.]

12. "Mining" means all underground workings by shaft, drift, slope or otherwise, for the securing, removing and taking out from under the ground, coal, iron ore, clays and all other minerals and mineral substances, found in and under the earth, and shall mean all work done by any miner or employé working in and about said mines in said shafts, slopes, headings, tunnels, rooms and other subterranean places therein, for the purposes of obtaining and removing therefrom all such minerals and mineral substances, and the benefits of this Act shall be extended to any employé, or in case of his death, to his dependent relatives, otherwise entitled, who shall be killed or injured while so working or employed therein, and such mineworker shall be deemed to be wholly employed in the State of Maryland, and entitled to the benefits of this Act, if the tippie, mouth or principal mine entrance in and about which he works is situated in this State, notwithstanding such shaft, heading, slope or other subterranean tunnel may extend underground

into an adjoining State, and notwithstanding such mine-worker so employed in this State may be killed or injured while working in said mine beyond the lines of this State and within the lines of an adjoining State. [Amendment made by Acts 1916, c. 86.]

§ 64. **Appropriation.**—The sum of forty thousand dollars (\$40,000) annually for the years 1914, 1915 and 1916, or so much thereof as may be necessary annually for the maintenance of the State Industrial Accident Commission, and the payment of the salaries and expenses of said Commission and its officers and employees, and so much thereof, if any, as may be necessary to maintain a solvent State Accident Fund, is hereby appropriated, and shall be payable on the order or orders of the said Commission from time to time, as in this law provided; and the Comptroller shall draw his warrant upon the Treasurer of Maryland, as in law provided, for the annual appropriations. And a further appropriation is hereby made of the sum of fifteen thousand dollars for the year 1914, for the necessary expenses of the aforesaid State Industrial Accident Commission to cover printing, office fixtures and such other legitimate expenses as the Commission may incur in establishing their office, or offices, as in this Act contemplated, and the Comptroller of the State of Maryland shall draw his warrant upon the Treasurer of Maryland for the said sum of fifteen thousand dollars (\$15,000), or any part thereof, upon the order or orders presented to the State Comptroller by the said State Industrial Accident Commission. [Acts 1914, c. 800, § 63.]

§ 65. **Repealing clause.**—Chapter 153 of the Acts of 1910, as amended by Chapter 445 of the Acts of 1912 of the General Assembly of Maryland be and the same are hereby repealed, except for the purpose of providing confirmation for all claims which may arise thereunder, prior to the first day of November, 1914; and if after all such claims are paid there be a surplus in the fund, it shall be turned over to the Treasurer of Maryland for the account of the State Industrial Accident Fund, but if there be a deficit in said fund at the time this Act takes effect as between employers and employees, the payments provided for under Chapter 153 of the Acts of 1910, as amended by Chapter 445 of the Acts of 1912, shall be continued by the employer and employees of Allegany and Garrett counties to the Treasurers of said counties until such pending claims are paid, when said payment shall cease. [Id. § 64.]

§ 66. **Same.**—The Acts of 1902, Chapter 139, and the Acts of 1912, Chapter 837, be and the same are hereby repealed; and that all Acts or parts of Acts in conflict with this Act are hereby repealed to the extent that they conflict with this Act and no further. [Id., § 65.]

§ 67. **Same.**—This Act shall take effect from the date of its passage, but that its application as between employers and employes shall date from and include the first day of November, one thousand nine hundred and fourteen. [Id. § 66.]

MASSACHUSETTS

WORKMEN'S COMPENSATION ACT

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9. Industrial Accident Board inspectors.
10. Joint board rules or regulations control.
11. Annual appropriation.
12. Definitions.
13. Violation of regulations.
14. All acts inconsistent herewith repealed.
15. When effective.

Chapter 308, Acts of 1916

1. Transfer of powers and duties.
2. When effective.

Chapter 183, General Acts of 1915

1. Insurers withdrawing shall deposit certain sums—Such sums shall be used to pay obligations.
2. Bond shall be furnished.
3. When effective.

Chapter 244, General Acts of 1915

1. Agent shall be designated.
2. Agent not to be appointed if insured.
3. When effective.

Chapter 270, Special Acts of 1915

1. Compensation to laborers, workmen and mechanics of Boston Transit Commission.
2. When effective

Chapter 287, General Acts of 1915

1. Compensation insurance separate.
2. Insurance policies subject to approval of insurance commissioner.
3. When effective.

Chapter 200, General Acts of 1916

1. Workmen's compensation and liability insurance.
2. Association to have same powers and liabilities as mutual companies.
3. When effective.

Chapter 75, Resolves of 1916

Board of education to investigate special training for injured.

WORKMEN'S COMPENSATION ACT ¹

(Chapter 751, Acts of 1911, as Amended by Chapters 172 and 571, Acts of 1912; Chapters 445, 448, 586, 696, 746, 807, and 813, Acts of 1913; Chapters 166, 338, and 708, Acts of 1914; Chapters 123, 132, 183, 236, 244, and 275, Acts of 1915; and Chapters 29, 72, 90, 200, 307, and 308, General Acts of 1916.)

An Act Relative to Payments to Employees for Personal Injuries Received in the Course of Their Employment and to the Prevention of Such Injuries. Be it enacted, etc., as follows:

PART I.—MODIFICATION OF REMEDIES

§ 1. **Defenses removed.**—In an action to recover damages for personal injury sustained by an employee in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:

1. That the employee was negligent;
2. That the injury was caused by the negligence of a fellow employee;
3. That the employee had assumed the risk of the injury.

§ 2. **Non-application.**—The provisions of section one shall not apply to actions to recover damages for personal injuries sustained by domestic servants and farm laborers.

§ 3. The provisions of section one shall not apply to actions to recover damages for personal injuries sustained by employees of a subscriber.

§ 4. The provisions of sections one hundred and twenty-seven to one hundred and thirty-five, inclusive, and of one hundred and forty-one to one hundred and forty-three, inclusive, of chapter five hundred and fourteen of the acts of the year nineteen hundred and nine, and of any acts in amendment thereof, shall not apply to employees of a subscriber while this act is in effect.

§ 5. **Waiver by employé, of right at common law.**—An employee of a subscriber shall be held to have waived his right of action at common law to recover damages for personal injuries if he shall not have given his employer, at the time of his contract of hire, notice in writing that he claimed such right, or if the contract of hire was made before the employer became a subscriber, if the employee shall not have given the said notice within thirty days of notice of such subscription. An employee who has given notice to his employer that he claimed his right of action at common law may waive such claim by a notice in writing which shall take effect five days after it is delivered to the employer or his agent. [See chapter 666, Acts of 1912.]

PART II.—PAYMENTS

§ 1. **Compensation of employé.**—If an employee who has not given notice of his claim of common law rights of action, as provided in Part I, section five, or who has given such notice and has waived the same, receives a personal injury arising out of and in the course of his employment, he shall be paid compensation by the association, as hereinafter provided, if his employer is a subscriber at the time of the injury.

¹ Act, with amendments, as arranged, with notes, by the Industrial Accident Board (Frank J. Donahue, Chairman; David T. Dickinson, Joseph A. Parks, Thomas F. Boyle, Chester E. Gleason; Robert E. Grandfield, Secretary) Boston, August 2, 1916.

§ 2. No compensation, when.—If the employee is injured by reason of his serious and wilful misconduct, he shall not receive compensation.

§ 3 [as amended by Acts of 1912, c. 571, § 1]. Double compensation.—If the employee is injured by reason of the serious and wilful misconduct of a subscriber or of any person regularly entrusted with and exercising the powers of superintendence, the amounts of compensation hereinafter provided shall be doubled. In such case the subscriber shall repay to the association the extra compensation paid to the employee. If a claim is made under this section the subscriber shall be allowed to appear and defend against such claim only.

§ 4 [as amended by General Acts of 1916, c. 90, § 1]. When compensation begins.—No compensation shall be paid under this act for any injury which does not incapacitate the employee for a period of at least ten days from earning full wages, but if incapacity extends beyond the period of ten days, compensation shall begin on the eleventh day after the injury. When compensation shall have begun, it shall not be discontinued except with the written assent of the employee or the approval of the board, or a member thereof: provided, however, that such compensation shall be paid in accordance with section ten of Part II of said chapter seven hundred and fifty-one, as amended by section five of chapter seven hundred and eight of the acts of the year nineteen hundred and fourteen, if the employee in fact earns wages at any time after the original agreement is filed. [In effect January 1, 1917.]

§ 5 [as amended by Acts of 1914, c. 708, § 1]. Medical and hospital services.—During the first two weeks after the injury, and, if the employee is not immediately incapacitated thereby from earning full wages, then from the time of such incapacity, and in unusual cases, in the discretion of the board, for a longer period, the association shall furnish reasonable medical and hospital services, and medicines, when they are needed. Where, in a case of emergency, or for other justifiable cause, a physician other than the one provided by the association is called in to treat the injured employee, the reasonable cost of his services shall be paid by the association, subject to the approval of the industrial accident board. Such approval shall be granted only if the board finds that there was such justifiable cause and that the charge for the services is reasonable. [In effect October 1, 1914.]

§ 6 [as amended by Acts of 1914, c. 708, § 2]. In case of fatal injury.—If death results from the injury, the association shall pay the dependents of the employee, wholly dependent upon his earnings for support at the time of the injury, a weekly payment equal to sixty-six and two thirds per cent of his average weekly wages, but not more than ten dollars nor less than four dollars a week for a period of five hundred weeks from the date of the injury; but in no case shall the amount be more than four thousand dollars. If the employee leaves dependents only partially dependent upon his earnings for support at the time of his injury, the association shall pay such dependents a weekly compensation equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of his injury. When weekly payments have been made to an injured employee before his death, the compensation

to dependents shall begin from the date of the last of such payments, but shall not continue more than five hundred weeks from the date of the injury. [In effect October 1, 1914.]

§ 7 [as amended by Acts of 1914, c. 708, § 3]. Dependency.—The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:—

(a) A wife upon a husband with whom she lives at the time of his death, or from whom, at the time of his death, the industrial accident board shall find the wife was living apart for justifiable cause or because he had deserted her. The findings of the board upon the question of such justifiable cause and desertion shall be final.

(b) A husband upon a wife with whom he lives at the time of her death.

(c) A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning), upon the parent with whom he is or they are living at the time of the death of such parent, there being no surviving dependent parent: provided, that in the event of the death of an employee who has at the time of his death a living child or children by a former wife or husband, under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning), said child or children shall be conclusively presumed to be wholly dependent for support upon such deceased employee, and the death benefit shall be divided between the surviving wife or husband and all the children of the deceased employee in equal shares, the surviving wife or husband taking the same share as a child. The total sum due the surviving wife or husband and her or his own children shall be paid directly to the wife or husband for her or his own use and for the benefit of her or his own children, and the sums due to the children by the former wife or husband of the deceased employee shall be paid to their guardians or legal representatives, for the benefit of such children.

In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof, and if there is no one wholly dependent and more than one person partly dependent, the death benefit shall be divided among them according to the relative extent of their dependency. [In effect June 25, 1914.]

§ 8. Expense of sickness and burial, if no dependents.—If the employee leaves no dependents, the association shall pay the reasonable expense of his last sickness and burial, which shall not exceed two hundred dollars.

§ 9 [as amended by Acts of 1914, c. 708, § 4]. Total incapacity.—While the incapacity for work resulting from the injury is total, the association shall pay the injured employee a weekly compensation equal to sixty-six and two thirds per cent of his average weekly wages, but not more than ten dollars nor less than four dollars a week, and in no case shall the period covered by such compensation be greater than five hundred weeks, nor the amount more than four thousand dollars. [In effect October 1, 1914.]

§ 10 [as amended by Acts of 1914, c. 708, § 5]. Partial incapacity.—While the incapacity for work resulting from the injury is partial, the association shall pay the injured employee a weekly compensation equal to

sixty-six and two thirds per cent of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than ten dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks from the date of the injury, nor the amount more than four thousand dollars. [In effect October 1, 1914.]

§ 11 [as amended by Acts of 1912, c. 571, § 2, Acts of 1913, c. 696, § 1, Acts of 1913, c. 445, § 1, and Acts of 1914, c. 708, § 6]. Specified injuries, additional compensation.—In case of the following specified injuries the amounts hereinafter named shall be paid in addition to all other compensation:—

(a) For the loss by severance of both hands at or above the wrist, or both feet at or above the ankle, or the loss of one hand and one foot, or the reduction to one tenth of normal vision in both eyes with glasses, sixty-six and two thirds per cent of the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of one hundred weeks.

(b) For the loss by severance of either hand, at or above the wrist, of either foot at or above the ankle, or the reduction to one tenth of normal vision in either eye with glasses, sixty-six and two thirds per cent of the average weekly wages of the injured person, for each hand or foot so severed, but not more than ten dollars nor less than four dollars a week for a period of fifty weeks.

(c) For the loss by severance at or above the second joint of two or more fingers, including thumbs, of the same hand, or of two or more toes of the same foot, sixty-six and two thirds per cent of the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twenty-five weeks for each hand or foot so injured.

(d) For the loss by severance of at least one phalange of a finger, thumb, or toe, sixty-six and two thirds per cent of the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twelve weeks for each hand or foot so injured.

(e) The additional amounts provided for in this section in case of the loss of a hand, foot, thumb, finger, toe, or phalange, shall also be paid for the number of weeks above specified, in case the injury is such that the hand, foot, thumb, finger, toe or phalange is not lost, but so injured as to be permanently incapable of use. [In effect October 1, 1914.]

§ 12. Savings not to be considered.—No savings or insurance of the injured employee, independent of this act, shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any other source than the association be considered in fixing the compensation under this act.

§ 13 [as amended by Acts of 1914, c. 708, § 7]. To whom payable, in case of death.—The compensation payable under this act in case of the death of the injured employee shall be paid to his legal representative; or, if he has no legal representative, to his dependents; or, if he leaves no dependents, to the persons to whom payment of the expenses for the last sickness and burial are due. If the payment is made to the legal representative of the deceased employee, it shall be paid by him to the dependents or other persons entitled thereto under this act. When the appointment of a legal

representative of a deceased employee, not otherwise necessary, is required for carrying out the provisions of this act, the association shall furnish or pay for all legal services rendered in connection with the appointment of such legal representative, or in connection with any of his duties, and shall pay the necessary disbursements for such appointment, the necessary expenses of such legal representative, and reasonable compensation to him for time necessarily spent in carrying out said provisions. All said payments shall be in addition to all sums paid for compensation. [In effect October 1, 1914.]

§ 14. Guardian of minor or incompetent employé.—If an injured employee is mentally incompetent or is a minor at the time when any right or privilege accrues to him under this act, his guardian or next friend may in his behalf claim and exercise such right or privilege.

§ 15. Notice of injury.—No proceedings for compensation for an injury under this act shall be maintained unless a notice of the injury shall have been given to the association or subscriber as soon as practicable after the happening thereof, and unless the claim for compensation with respect to such injury shall have been made within six months after the occurrence of the same; or, in case of the death of the employee, or in the event of his physical or mental incapacity, within six months after death or the removal of such physical or mental incapacity.

§ 16 [as amended by Acts of 1912, c. 172, and Acts of 1912, c. 571, § 3]. Form of notice.—The said notice shall be in writing, and shall state in ordinary language the time, place and cause of the injury, and shall be signed by the person injured, or by a person in his behalf, or, in the event of his death, by his legal representative or by a person in his behalf, or by a person to whom payments may be due under this act or by a person in his behalf. Any form of written communication signed by any person who may give the notice as above provided, which contains the information that the person has been so injured, giving the time, place and cause of the injury, shall be considered a sufficient notice.

§ 17. Service of notice.—The notice shall be served upon the association, or an officer or agent thereof, or upon the subscriber, or upon one subscriber, if there are more subscribers than one, or upon any officer or agent of a corporation if the subscriber is a corporation, by delivering the same to the person on whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to the person or corporation on whom it is to be served, at his last known residence or place of business.

§ 18. Inaccuracy.—A notice given under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place or cause of the injury, unless it is shown that it was the intention to mislead and the association was in fact misled thereby. Want of notice shall not be a bar to proceedings under this act, if it be shown that the association, subscriber, or agent had knowledge of the injury.

§ 19 [as amended by Acts of 1912, c. 571, § 4]. Medical examination, if requested by association.—After an employee has received an injury, and from time to time thereafter during the continuance of his disability he shall, if so requested by the association or subscriber, submit himself to an examination by a physician or surgeon authorized to practice medi-

cine under the laws of the commonwealth, furnished and paid for by the association or subscriber. The employee shall have the right to have a physician provided and paid for by himself present at the examination. If he refuses to submit himself for the examination, or in any way obstructs the same, his right to compensation shall be suspended, and his compensation during the period of suspension may be forfeited.

§ 20. No agreement to waive compensation valid.—No agreement by an employee to waive his rights to compensation under this act shall be valid.

§ 21. No payment assignable.—No payment under this act shall be assignable or subject to attachment, or be liable in any way for any debts.

§ 22 [as amended by Acts of 1914, c. 708, § 8]. Lump sum payment.—Whenever any weekly payment has been continued for not less than six months, the liability therefor may in unusual cases where the parties agree and the board deems it to be for the best interest of the employee or his dependents, be redeemed by the payment, in whole or in part, by the association, of a lump sum which shall be fixed by the board, but in no case to exceed the amount provided by said act. The board may, however, in its discretion at any time in the case of a minor who has received permanently disabling injuries, either partial or total, provide that he be compensated, in whole or in part, by the payment of a lump sum, the amount of which shall be fixed by the board, but in no case to exceed the amount provided by said act. [In effect October 1, 1914.]

§ 23 [as amended by Acts of 1912, c. 571, § 5]. Claim for compensation.—The claim for compensation shall be in writing and shall state the time, place, cause and nature of the injury; it shall be signed by the person injured or by a person in his behalf, or, in the event of his death, by his legal representative or by a person in his behalf, or by a person to whom payments may be due under this act or by a person in his behalf, and shall be filed with the industrial accident board. The failure to make a claim within the period prescribed by section fifteen shall not be a bar to the maintenance of proceedings under this act if it is found that it was occasioned by mistake or other reasonable cause.

§ 24 [new section as added by Acts of 1914, c. 708, § 14]. Interest on payments in appealed cases.—Whenever any question involving the compensation of an injured employee, or his dependents, is appealed to the supreme judicial court, and the decision rendered is in favor of the employee or his dependents, interest to the date of payment shall be paid by the association on all sums due as compensation to such employee or dependents. [In effect October 1, 1914.]

(Chapter 236, General Acts of 1915.)²

An Act relative to compensation to young and inexperienced workmen who receive injuries.

Be it enacted, etc., as follows:

§ 1. Natural wage increase to be taken into consideration.—Whenever an employee is injured under circumstances that would entitle him to compensation under the provisions of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven, and acts in amendment

² The above chapter, having reference to the determination of compensation payments, is inserted here and may be considered as a section of Part II.

thereof and in addition thereto, if it be established that the injured employee was of such age and experience when injured that, under natural conditions, his wages would be expected to increase, that fact may be taken into consideration in determining his weekly wages.

§ 2. **When effective.**—This act shall take effect upon its passage. [Approved May 10, 1915.]

PART III.—PROCEDURE

§ 1 [as amended by Acts of 1912, c. 571, § 6]. **Industrial Accident Board.**—There shall be an industrial accident board consisting of five members, to be appointed by the governor, by and with the advice and consent of the council, one of whom shall be designated by the governor as chairman. The term of office of members of this board shall be five years, except that when first constituted one member shall be appointed for one year, one for two years, one for three years, one for four years, and one for five years. Thereafter one member shall be appointed every year for the full term of five years.

§ 2 [as amended by Acts of 1912, c. 571, § 7]. **Salaries and expenses.**—The salaries and expenses of the board shall be paid by the commonwealth. The salary of the chairman shall be five thousand dollars a year, and the salary of the other members shall be forty-five hundred dollars a year each. The board may appoint a secretary at a salary of not more than three thousand dollars a year, and may remove him. It shall also be allowed an annual sum, not exceeding ten thousand dollars, for clerical service, and travelling and other necessary expenses. The board shall be provided with an office in the state house or in some other suitable building in the city of Boston, in which its records shall be kept.

§ 3 [as amended by Acts of 1912, c. 571, § 8, and General Acts of 1915, cc. 123, 275]. **Rules—Procedure—Witnesses—Depositions and letters rogatory.**—The board may make rules not inconsistent with this act for carrying out the provisions of the act. Process and procedure under this act shall be as simple and summary as reasonably may be. The board or any member thereof shall have the power to subpoena witnesses, administer oaths, and to examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. Upon the written request of the board or of any member thereof, together with interrogatories and cross-interrogatories, if any there be, filed with the clerk of the superior court for any county of this commonwealth, commissions to take depositions of persons or witnesses residing without the commonwealth, or in foreign countries, or letters rogatory to any court in any other of the United States or to any court in any foreign country, shall forthwith issue from the said superior court, as in cases pending in said superior court, and upon the return of the said depositions or answers to letters rogatory the same shall be opened by the clerk of the court which issued the commissions or letters, and the said clerk shall endorse thereon the date upon which any deposition or answer to letters rogatory was received and the same shall forthwith be delivered to the board. No entry fee shall be charged in such cases. The fees for attending as a witness before the industrial accident board shall be one dollar and fifty cents a day, for attending before an arbitration committee fifty cents a day; in both cases five cents a mile for travel out and home. The superior court shall have power to enforce by proper proceedings the provisions of this section relating

to the attendance and testimony of witnesses and the examination of books and records.

§ 4 [as amended by Acts of 1912, c. 571, § 9]. Agreements—Memorandum—Enforcement.—If the association and the injured employee reach an agreement in regard to compensation under this act, a memorandum of the agreement shall be filed with the industrial accident board and, if approved by it, thereupon the memorandum shall for all purposes be enforceable under the provisions of Part III, section eleven. Such agreements shall be approved by said board only when the terms conform to the provisions of this act.

§ 5 [as amended by Acts of 1912, c. 571, § 9, and Acts of 1914, c. 708, § 9]. Arbitration if no agreement—Oath of arbitrators.—If the association and the injured employee fail to reach an agreement in regard to compensation under this act, or if they have reached such an agreement, which has been signed and filed in accordance with the provisions of this act, and compensation has been paid or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may notify the industrial accident board, who shall thereupon call for the formation of a committee of arbitration. The committee of arbitration shall consist of three members, one of whom shall be a member of the industrial accident board, and shall act as chairman. The other two members shall be named, respectively, by the two parties. If the subscriber has appeared under the provisions of Part II, section three, the member named by the association shall be subject to his approval. If a vacancy occurs it shall be filled by the parties whose representative is unable to act.

The arbitrators appointed by the parties shall be sworn by the chairman as follows: I, ———, do solemnly swear that I will faithfully perform my duty as arbitrator and will not be influenced in my decision by any feeling of friendship or partiality toward either party. So help me God. [In effect October 1, 1914.]

§ 6 [as amended by Acts of 1912, c. 571, § 11]. Appointment of arbitrators.—It shall be the duty of the industrial accident board, upon notification that the parties have failed to reach an agreement, to request both parties to appoint their respective representatives on the committee of arbitration. The board shall designate one of its members to act as chairman, and, if either party does not appoint its member on this committee within seven days after notification, as above provided, or after a vacancy has occurred, the board or any member thereof shall fill the vacancy and notify the parties to that effect.

§ 7 [as amended by Acts of 1912, c. 571, § 12]. Hearings by arbitrators.—The committee on arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings of the committee shall be held in the city or town where the injury occurred, and the decision of the committee, together with a statement of the evidence submitted before it, its findings of fact, rulings of law and any other matters pertinent to questions arising before it shall be filed with the industrial accident board. Unless a claim for a review is filed by either party within seven days, the decision shall be enforceable under the provisions of Part III, section eleven.

§ 8 [as amended by Acts of 1914, c. 708, § 10, and General Acts of 1916, c. 72]. Examination of employé by physician for Board.—The industrial accident board or any member thereof may appoint a duly qualified

impartial physician to examine the injured employee and to report. The fee for this service shall be five dollars and travelling expenses, but the board may allow additional reasonable amounts in extraordinary cases, and the association shall reimburse the board for the amount so paid. The report of the physician shall be admissible as evidence in any proceeding before the industrial accident board or a committee of arbitration, provided that the employee and insurer have seasonably been furnished with copies thereof. [In effect March 23, 1916.]

§ 9. Fees of arbitrators.—The arbitrators named by or for the parties to the dispute shall each receive five dollars as a fee for his services, but the industrial accident board or any member thereof may allow additional reasonable amounts in extraordinary cases. The fees shall be paid by the association, which shall deduct an amount equal to one third of the sum from any compensation found due the employee.

§ 10 [as amended by Acts of 1912, c. 571, § 13]. Review of arbitration by Board.—If a claim for a review is filed, as provided in Part III, section seven, the board shall hear the parties and may hear evidence in regard to any or all matters pertinent thereto and may revise the decision of the committee in whole or in part, or may refer the matter back to the committee for further findings of fact, and shall file its decision with the records of the proceedings and notify the parties thereof. No party shall as a matter of right be entitled to a second hearing upon any question of fact.

§ 11 [as amended by Acts of 1912, c. 571, § 14]. Court decrees and appeals.—Any party in interest may present certified copies of an order or decision of the board, a decision of an arbitration committee from which no claim for review has been filed within the time allowed therefor, or a memorandum of agreement approved by the board, and all papers in connection therewith, to the superior court for the county in which the injury occurred or for the county of Suffolk, whereupon said court shall render a decree in accordance therewith and notify the parties. Such decree shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though rendered in a suit duly heard and determined by said court, except that there shall be no appeal therefrom upon questions of fact, or where the decree is based upon a decision of an arbitration committee or a memorandum of agreement, and that there shall be no appeal from a decree based upon an order or decision of the board which has not been presented to the court within ten days after the notice of the filing thereof by the board. Upon the presentation to it of a certified copy of a decision of the industrial accident board ending, diminishing or increasing a weekly payment under the provisions of Part III, section twelve, the court shall revoke or modify the decree to conform to such decision.

§ 12 [as amended by Acts of 1914, c. 708, § 11]. Review of payments by Board.—Any weekly payment under this act may be reviewed by the industrial accident board, and on such review the board may, in accordance with the evidence and subject to the provisions of this act, issue any order which it deems advisable. [In effect June 25, 1914.]

§ 13 [as amended by Acts of 1914, c. 708, § 12]. Fees subject to Board's approval.—Fees of attorneys and physicians and charges of hospitals for services under this act shall be subject to the approval of the industrial accident board. If the association and any physician or hospital, or

the employee and any attorney, fail to reach an agreement as to the amount to be paid for such services, either party may notify the board, which may thereupon call for the formation of a committee of arbitration in accordance with the provisions of this act, and all proceedings thereunder shall be in accordance with the provisions of this act. [In effect June 25, 1914.]

§ 14. Assessment of costs.—If the committee of arbitration, industrial accident board, or any court before whom any proceedings are brought under this act determines that such proceedings have been brought, prosecuted, or defended without reasonable ground, it shall assess the whole cost of the proceedings upon the party who has so brought, prosecuted or defended them.

§ 15 [as amended by Acts of 1913, c. 448, § 1]. Optional procedure.—Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than the subscriber to pay damages in respect thereof, the employee may at his option proceed either at law against that person to recover damages, or against the association for compensation under this act, but not against both; and if compensation be paid under this act, the association may enforce in the name of the employee, or in its own name and for its own benefit, the liability of such other person, and in case the association recovers a sum greater than that paid by the association to the employee four fifths of the excess shall be paid over to the employee.

§ 16 [as amended by Acts of 1912, c. 571, § 15]. Questions determined by board—Enforcement of decisions.—All questions arising under this act, if not settled by agreement by the parties interested therein, shall, except as otherwise herein provided, be determined by the industrial accident board. The decisions of the industrial accident board shall for all purposes be enforceable under the provisions of Part III, section eleven.

§ 17. Employés of contractor.—If a subscriber enters into a contract, written or oral, with an independent contractor to do such subscriber's work, or if such a contractor enters into a contract with a sub-contractor to do all or any part of the work comprised in such contract with the subscriber, and the association would, if such work were executed by employees immediately employed by the subscriber, be liable to pay compensation under this act to those employées, the association shall pay to such employees any compensation which would be payable to them under this act if the independent or sub-contractors were subscribers. The association, however, shall be entitled to recover indemnity from any other person who would have been liable to such employees independently of this section, and if the association has paid compensation under the terms of this section, it may enforce in the name of the employee, or in its own name and for the benefit of the association, the liability of such other person. This section shall not apply to any contract of an independent or sub-contractor which is merely ancillary and incidental to, and is no part of or process in, the trade or business carried on by the subscriber, nor to any case where the injury occurred elsewhere than on, in, or about the premises on which the contractor has undertaken to execute the work for the subscriber or which are under the control or management of the subscriber.

§ 18 [as amended by Acts of 1913, c. 746, § 1]. Employers to report all injuries—Supplemental report—Form of report of injury—Penalty.—Every employer shall hereafter keep a record of all injuries, fatal or other—

wise, received by his employees in the course of their employment. Within forty-eight hours, not counting Sundays and legal holidays, after the occurrence of an injury, a report thereof shall be made in writing to the industrial accident board on blanks to be procured from the board for the purpose. Upon the termination of the disability of the injured employee, the employer shall make a supplemental report upon blanks to be procured from the board for that purpose. If the disability extends beyond a period of sixty days, the employer shall report to the board at the end of such period that the injured employee is still disabled, and upon the termination of the disability shall file a final supplemental report as provided above.

The said reports shall contain the name and nature of the business of the employer, the situation of the establishment, the name, age, sex, and occupation of the injured employee, and shall state the date and hour of any accident causing the injury, the nature and cause of the injury, and such other information as may be required by the board.

Any employer who refuses or neglects to make the report required by this section shall be punished by a fine of not more than fifty dollars for each offence.

Copies of all reports of injuries filed by employers with the industrial accident board and all statistics and data compiled therefrom shall be kept available by the said board and shall be furnished on request to the state board of labor and industries for its own use.

Within sixty days after the termination of the disability of the injured employee, the association or other party liable to pay the compensation provided for by Part II of this act shall file with the board a statement showing the total payments made or to be made for compensation and for medical services for such injured employee.

(Chapter 132, General Acts of 1915.)³

An Act relative to appeals under the Workmen's Compensation Act, so-called.

Be it enacted, etc., as follows:

§ 1. Compensation to be paid, despite appeal, until otherwise ordered.—An order or decision of the industrial accident board, a decree of the superior court upon such an order, a decision of an arbitration committee from which no claim for review has been filed within the time allowed therefor, or a memorandum of agreement approved by the industrial accident board, shall have effect, notwithstanding an appeal, until it is otherwise ordered by a justice of the supreme judicial court who may, in any county, suspend or modify such decree, order or decision, during the pendency of the appeal.

§ 2. When effective.—This act shall take effect upon its passage. [Approved April 2, 1915.]

³ The above chapter, having reference to procedure, is inserted here and may be considered as a section of Part III.

PART IV.—THE MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION.—[SEE CHAPTER 721, ACTS OF 1912, AS AMENDED BY CHAPTER 338, ACTS OF 1914].

§ 1. **Employés Insurance Association Created.**—The Massachusetts Employees Insurance Association is hereby created a body corporate with the powers provided in this act and with all the general corporate powers incident thereto.

§ 2. **Directors.**—The board of directors of the association shall consist of not less than fifteen members, to be elected by ballot by the members, who shall hold office for such term or terms as the by-laws may provide in accordance with the provisions of section twenty-six of chapter five hundred and seventy-six of the acts of the year nineteen hundred and seven and until their successors are elected.

§ 3. **Powers of directors and by-laws.**—Until the first meeting of the subscribers the board of directors shall have and exercise all the powers of the subscribers, and may adopt by-laws not inconsistent with the provisions of this act, which shall be in effect until amended or repealed by the subscribers.

§ 4. **Officers.**—The board of directors shall annually choose by ballot a president, who shall be a member of the board, a secretary, a treasurer, and such other officers as the by-laws shall provide.

§ 5. **Quorum and vacancies.**—Seven or more of the directors shall constitute a quorum for the transaction of business.

Vacancies in any office may be filled in such manner as the by-laws shall provide.

§ 6. **Any employer may become subscriber.**—Any employer in the Commonwealth may become a subscriber.

§ 7. **First meeting of subscribers.**—The board of directors shall, within thirty days of the subscription of twenty-five employers, call the first meeting of the subscribers by a notice in writing mailed to each subscriber at his place of business not less than ten days before the date fixed for the meeting.

§ 8. **Subscribers' voting power.**—In any meeting of the subscribers each subscriber shall be entitled to one vote, and if a subscriber has five hundred employees to whom the association is bound to pay compensation he shall be entitled to two votes, and he shall be entitled to one additional vote for each additional five hundred employees to whom the association is bound to pay compensation, but no subscriber shall cast, by his own right or by the right of proxy, more than twenty votes.

§ 9. **Minimum standard.**—No policy shall be issued by the association until not less than one hundred employers have subscribed, who have not less than ten thousand employees to whom the association may be bound to pay compensation.

§ 10. **Other requirements.**—No policy shall be issued until a list of the subscribers, with the number of employees of each, together with such other information as the insurance commissioner may require, shall have been filed at the insurance department, nor until the president and secretary of the association shall have certified under oath that every subscription in the list so filed is genuine and made with an agreement by every subscriber that he will take the policies subscribed for by him within thirty days of the grant-

ing of a license to the association by the insurance commissioner to issue policies.

§ 11. When further policies not to be issued.—If the number of subscribers falls below one hundred, or the number of employees to whom the association may be bound to pay compensation falls below ten thousand, no further policies shall be issued until other employers have subscribed who, together with existing subscribers amount to not less than one hundred who have not less than ten thousand employees, said subscriptions to be subject to the provisions contained in the preceding section.

§ 12. License.—Upon the filing of the certificate provided for in the two preceding sections the insurance commissioner shall make such investigation as he may deem proper and, if his findings warrant it, grant a license to the association to issue policies.

§ 13. Subscribers to be distributed into groups.—The board of directors shall distribute the subscribers into groups in accordance with the nature of the business and the degree of the risk of injury.

Subscribers within each group shall annually pay in cash, or notes absolutely payable, such premiums as may be required to pay the compensation herein provided for the injuries which may occur in that year.

§ 14. Contingent liability.—The association may in its by-laws and policies fix the contingent mutual liability of the subscribers for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a subscriber shall not be less than an amount equal to and in addition to the cash premium.

§ 15. Assessments.—If the association is not possessed of cash funds above its unearned premiums sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the subscribers liable to assessment therefor in proportion to their several liability.

Every subscriber shall pay his proportional part of any assessments which may be laid by the association, in accordance with law and his contract, on account of injuries sustained and expenses incurred while he is a subscriber.

§ 16. Dividends—Funds available.—The board of directors may, from time to time, by vote fix and determine the amount to be paid as a dividend upon policies expiring during each year after retaining sufficient sums to pay all the compensation which may be payable on account of injuries sustained and expenses incurred.

All premiums, assessments, and dividends shall be fixed by and for groups as heretofore provided in accordance with the experience of each group, but all the funds of the association and the contingent liability of all the subscribers shall be available for the payment of any claim against the association.

§ 17. Approval by insurance commissioner.—Any proposed premium, assessment, dividend or distribution of subscribers shall be filed with the insurance department and shall not take effect until approved by the insurance commissioner after such investigation as he may deem necessary. [See Acts of 1912, c. 666.]

§ 18. Rules for the prevention of injuries.—The board of directors shall make and enforce reasonable rules and regulations for the prevention of injuries on the premises of subscribers, and for this purpose the inspectors

of the association shall have free access to all such premises during regular working hours.

Any subscriber or employee aggrieved by any such rule or regulation may petition the industrial accident board for a review, and it may affirm, amend, or annul the rule or regulation.

§ 19. False oath by officer of association.—If any officer of the association shall falsely make oath to any certificate required to be filed with the insurance commissioner, he shall be guilty of perjury.

§ 20. Notice to employés of insurance.—Every subscriber shall, as soon as he secures a policy, give notice, in writing or print, to all persons under contract of hire with him that he has provided for payment to injured employees by the association.

§ 21 [as amended by Acts of 1912, c. 571, § 16]. Further notice.—Every subscriber shall give notice in writing or print to every person with whom he is about to enter into a contract of hire that he has provided for payment to injured employees by the association. If an employer ceases to be a subscriber he shall, on or before the day on which his policy expires, give notice thereof in writing or print to all persons under contract with him. In case of the renewal of the policy no notice shall be required under the provisions of this act. He shall file a copy of said notice with the industrial accident board. The notices required by this and the preceding section may be given in the manner therein provided or in such other manner as may be approved by the industrial accident board.

§ 22. Subscriber indemnified from actions at law.—If a subscriber, who has complied with all the rules, regulations and demands of the association, is required by any judgment of a court of law to pay to an employee any damages on account of personal injury sustained by such employee during the period of such subscription, the association shall pay to the subscriber the full amount of such judgment and the cost assessed therewith, if the subscriber shall have given the association notice in writing of the bringing of the action upon which the judgment was recovered and an opportunity to appear and defend the same.

§ 23. Application of regular insurance laws.—The provisions of chapter five hundred and seventy-six of the acts of the year nineteen hundred and seven and of acts in amendment thereof shall apply to the association, so far as such provisions are pertinent and not in conflict with the provisions of this act, except that the corporate powers shall not expire because of failure to issue policies or make insurance.

§ 24. Expenses of directors.—The board of directors appointed by the governor under the provisions of Part IV, section two, may incur such expenses in the performance of its duties as shall be approved by the governor and council. Such expenses shall be paid from the treasury of the commonwealth and shall not exceed in amount the sum of fifteen thousand dollars.

PART V.—MISCELLANEOUS PROVISIONS

§ 1. Release of subscriber from claims at law.—If an employee of a subscriber files any claim with or accepts any payment from the association on account of personal injury, or makes any agreement, or submits any question to arbitration, under this act, such action shall constitute a release to

the subscriber of all claims or demands at law, if any, arising from the injury.

§ 2 [as amended by Acts of 1913, c. 568, § 1, and Acts of 1914, c. 708, § 13]. Definitions.—The following words and phrases, as used in this act, shall, unless a different meaning is plainly required by the context, have the following meaning:—

“Employer” shall include the legal representative of a deceased employer.

“Employee” shall include every person in the service of another under any contract of hire, express or implied, oral or written, except masters of and seamen on vessels engaged in interstate or foreign commerce, and except one whose employment is not in the usual course of the trade, business, profession or occupation of his employer. Any reference to an employee who has been injured shall, when the employee is dead, also include his legal representatives, dependents and other persons to whom compensation may be payable. [In effect October 1, 1914.]

“Dependents” shall mean members of the employee’s family or next of kin who were wholly or partly dependent upon the earnings of the employee for support at the time of the injury.

“Average weekly wages” shall mean the earnings of the injured employee during the period of twelve calendar months immediately preceding the date of injury, divided by fifty-two; but if the injured employee lost more than two weeks’ time during such period then the earnings for the remainder of such twelve calendar months shall be divided by the number of weeks remaining after the time so lost has been deducted. Where, by reason of the shortness of the time during which the employee has been in the employment of his employer, or the nature or terms of the employment, it is impracticable to compute the average weekly wages, as above defined, regard may be had to the average weekly amount which, during the twelve months previous to the injury, was being earned by a person in the same grade employed at the same work by the same employer; or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district.

“Association” shall mean the Massachusetts Employees Insurance Association.

“Subscriber” shall mean an employer who has become a member of the association by paying a year’s premium in advance and receiving the receipt of the association therefor, provided that the association holds a license issued by the insurance commissioner as provided in Part IV, section twelve.

§ 3 [as amended by Acts of 1912, c. 571, § 17]. Rights of any liability company under act same as association.—Any liability insurance company authorized to do business within this commonwealth shall have the same right as the association to insure the liability to pay the compensation provided for by Part II of this act, and when such liability company issues a policy conditioned to pay such compensation the holder of such policy shall be regarded as a subscriber so far as applicable within the meaning of this act, and when any such company insures such payment of compensation it shall be subject to the provisions of Parts I, II, III and V and of section twenty-two of Part IV of this act, and shall file with the insurance department its classifications of risks and premiums relating thereto and any subsequent proposed classifications of premiums, none of which shall take effect

until the insurance commissioner has approved the same as adequate for the risks to which they respectively apply.

§ 4 [as amended by Acts of 1912, c. 571, § 18]. **Repeal.**—Sections one hundred and thirty-six to one hundred and thirty-nine, inclusive, of chapter five hundred and fourteen of the acts of the year nineteen hundred and nine are hereby repealed.

§ 5. **Not retroactive.**—The provisions of this act shall not apply to injuries sustained prior to the taking effect thereof.

§ 6 [as amended by Acts of 1912, c. 571, § 19]. **When act takes effect.**—Part IV of this act shall take effect on the first day of January, nineteen hundred and twelve; sections one to three, inclusive, of Part III shall take effect on the tenth day of May, nineteen hundred and twelve; the remainder thereof shall take effect on the first day of July, nineteen hundred and twelve.

§ 7 [new section, as added by Acts of 1914, c. 708, § 15]. **Information and statistics to be furnished by insurers.**—The association and all insurance companies insuring employees under the provisions of this act shall, at the request of the industrial accident board, furnish to said board in writing any information required in connection with the administration by said board of said act, including any statistical facts and figures and the names of all employers insured by them. [In effect October 1, 1914.]

§ 8 [new section, as added by Acts of 1914, c. 708, § 15]. **Branch offices.**—There may be established and maintained under the care and direction of the industrial accident board not more than four branch offices, in such cities as may be selected by said board from time to time after proper investigation, for the purpose of the better adjustment of disputed cases, and for the better information of all parties as to their rights under this act. Said board is hereby authorized to provide such offices with useful rooms, furniture and equipment required for the transaction of the business authorized by this act, also to appoint such officers, agents, clerks, and assistants as are necessary to discharge in connection with such offices the duties required by said act, under the direction of said industrial accident board. [In effect October 1, 1914.]

§ 9 [new section, as added by Acts of 1914, c. 708, § 15]. **Medical adviser.**—The industrial accident board may appoint a medical adviser who shall be a duly qualified physician. Said board shall prescribe the duties of said medical adviser. His compensation shall be fixed by said board, subject to the approval of the governor and council, and shall not exceed the sum of four thousand dollars a year. [In effect June 25, 1914.]

ADDITIONAL PROVISIONS AND AMENDMENTS

Chapter 708, Acts of 1914,⁴ further provides:

§ 16. **Present insurance rates to apply until approval is withdrawn.**—All insurance rates under said chapter seven hundred and fifty-one [Acts of 1911], and acts in amendment thereof and in addition thereto, now on file and approved by the insurance commissioner, shall continue to apply to the several classifications after the taking effect of the provisions of this act, unless the insurance commissioner withdraws approval in accordance

⁴ Sections 16 and 17 of chapter 708, Acts of 1914, although not specifically so designated, may be considered as sections 10 and 11, Part V.

with the provisions of chapter six hundred and sixty-six of the acts of the year nineteen hundred and twelve. [In effect October 1, 1914.]

§ 17. Dates upon which sections of chapter become effective.—Sections one, two, four, five, six, seven, eight, thirteen and fourteen of this act shall take effect on the first day of October next, except that all policies of insurance under chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven and acts in amendment thereof and in addition thereto, written after the passage of this act, shall provide for the payment after said first day of October of the additional benefits provided by said sections, and in all other respects this act shall take effect upon its passage. [Approved June 25, 1914.]

(Chapter 311, Acts of 1912.)

An Act to authorize certain mutual insurance companies to transact the business of employers' liability insurance, so-called.

Be it enacted, etc., as follows:

§ 1. Mutual insurance companies.—Section one of chapter two hundred and fifty-one of the acts of the year nineteen hundred and eleven is hereby amended by adding at the end thereof the words:—Mutual companies doing business and organized prior to April sixth, nineteen hundred and eleven, to transact employers' liability business may have and exercise all the rights and powers conferred by this section upon companies which may be organized hereunder, but such rights and powers shall not be exercised unless authorized by a two thirds vote of the policy-holders present and voting at a meeting duly called for that purpose,—so as to read as follows:—Section 1. Ten or more persons who are residents of this commonwealth may form an insurance company on the mutual plan to insure any person, firm or corporation against loss or damage on account of the bodily injury or death by accident of any person, or against damage caused by automobiles to property of another, for which loss or damage such person, firm or corporation is responsible. The corporation shall be formed in the manner described in, and be subject to, the provisions of sections fifteen to twenty, inclusive, of chapter one hundred and ten of the Revised Laws, except as is otherwise provided herein. Mutual companies doing business and organized prior to April sixth, nineteen hundred and eleven, to transact employers' liability business may have and exercise all the rights and powers conferred by this section upon companies which may be organized hereunder, but such rights and powers shall not be exercised unless authorized by a two thirds vote of the policy-holders present and voting at a meeting duly called for that purpose.

§ 2. When effective.—This act shall take effect upon its passage. [Approved March 22, 1912.]

(Chapter 666, Acts of 1912.)

An Act relative to the insurance of compensation to employees for personal injuries received in the course of their employment.

Be it enacted, etc., as follows:

§ 1. Withdrawal of approval by insurance commissioner.—The insurance commissioner may withdraw his approval of any premium or distribution of subscribers given by him to the Massachusetts Employees Insurance

Association under the provisions of section seventeen of Part IV of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven, or of any premium or rate made by an insurance company and approved by him under the provisions of section three of Part V of said chapter seven hundred and fifty-one as amended by section seventeen of chapter five hundred and seventy-one of the acts of the year nineteen hundred and twelve.

§ 2. **Manner of giving notices.**—The notices required by section five of Part I of said chapter seven hundred and fifty-one shall be given in such manner as the industrial accident board may approve.

§ 3. **When effective.**—This act shall take effect upon its passage. [Approved May 28, 1912.]

(Chapter 807, Acts of 1913.)

An Act to provide for compensating certain public employees for injuries sustained in the course of their employment.

Be it enacted, etc., as follows:

§ 1. **Public employés—Payment of compensation by commonwealth or municipality.**—The commonwealth shall and any county, city, or town, or district having the power of taxation, may pay the compensation provided by Part II of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven and acts in amendment thereof and in addition thereto to such laborers, workmen and mechanics employed by it as receive injuries arising out of and in the course of their employment, or, in case of death resulting from any such injury, may pay compensation as provided in sections six, seven and eight of said Part II, and in any amendments thereof, to the persons thereto entitled.

§ 2. **Procedure and Jurisdiction—Payment of compensation.**—Procedure under this act and the jurisdiction of the industrial accident board shall be the same as under the provisions of said chapter seven hundred and fifty-one, and the commonwealth or a county, city, town or district which accepts the provisions of this act shall have the same rights in proceedings under said chapter as the association thereby created. The treasurer and receiver general, or the treasurer or officer having similar duties of a county, city, town or district which accepts the provisions of this act, shall pay any compensation awarded for injury to any person in its employment upon proper vouchers without any further authority.

§ 3. **How provisions may be accepted—Form of ballot—Notice of result of vote.**—Counties, cities, towns, and districts having the power of taxation, may accept the provisions of this act by vote of a majority of those legal voters who vote on the question of its acceptance at an annual meeting or election as hereinafter provided. In towns and districts which have an annual meeting of the legal voters, this act shall be submitted for acceptance to the voters of the town or district at the next annual meeting after its passage. In cities, and in towns which do not have annual meetings, this act shall be submitted to the voters at the next municipal election, and in counties and in districts which do not have an annual meeting, at the next state election after its passage. At every such election, and at every annual meeting where ballots are used, the following question shall be printed on the ballot:

"Shall chapter ——— of the acts of nineteen hundred and thirteen, being an act to provide for compensating laborers, workmen and mechanics for injuries sustained in public employment, and to exempt from legal liability counties and municipal corporations which pay such compensation, be accepted by the inhabitants of this (county, city, town, water district, fire district, etc.) of ———?"

Yes.	
No.	

The vote shall be canvassed by the county commissioners, city council or commission, or selectmen, or, in the case of a district, by the district commissioners or other governing board of the district. A notice stating the result of the vote shall be posted in the county court house, or city or town hall, or, in the case of a district, in the public building where the employees of the district are paid. Except as provided in section four, a county, city, town or district which accepts the provisions of this act shall not be liable in any action for a personal injury sustained by a laborer, workman or mechanic in the course of his employment by such county, city, town or district, or for death resulting from such injury.

§ 4. Claim or waiver of right of action at law.—A laborer, workman or mechanic entering or remaining in the service of a county, city, town or district, who would, if injured, have a right of action against the county, city, town or district by existing law, may, if the county, city, town or district has accepted the provisions of this act, before he enters its service, or accepts them afterward, claim or waive his right of action as provided in section five of Part I of said chapter seven hundred and fifty-one, and shall be deemed to have waived such right of action unless he claims it. Section four of said Part I shall apply to actions by laborers, workmen or mechanics employed by a county, city, town or district which accepts the provisions of this act.

§ 5. Election of compensation or pension.—Any person entitled to receive from the commonwealth or from a county, city, town or district the compensation provided by Part II of said chapter seven hundred and fifty-one, who is also entitled to a pension by reason of the same injury, shall elect whether he will receive such compensation or such pension, and shall not receive both. In case a person entitled to such compensation from the commonwealth or from a county, city, town or district receives by special act a pension for the same injury, he shall forfeit all claim for compensation, and any compensation received by him or paid by the commonwealth or by the county, city, town or district which employs him for medical or hospital services rendered to him may be recovered back in an action at law. No further payment shall be awarded by vote or otherwise to any person who has claimed and received compensation under this act.

§ 6. Act applicable to all laborers, workmen and mechanics.—This act shall apply to all laborers, workmen and mechanics in the service of the commonwealth or of a county, city or town, or district having the power of taxation, under any employment or contract of hire, expressed or implied, oral or written, including those employed in work done in performance of governmental duties as well as those employed in municipal enterprises conducted for gain or profit. For the purposes of this act all laborers, workmen and mechanics paid by the commonwealth, but serving under boards or commissions exercising powers within defined districts, shall be deemed to be in the service of the commonwealth.

§ 7 [as amended by General Acts of 1916, c. 307, § 1]. The provisions of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven, and acts in amendment thereof and in addition thereto shall not apply to any persons in public employments other than laborers, workmen and mechanics employed by counties, cities, towns, or districts having the power of taxation. [In effect June 2, 1916.]

(Chapter 813, Acts of 1913.)

An Act Relative to Industrial Accidents and Occupational Diseases.⁵

Be it enacted, etc., as follows:

§ 1. **Joint board to investigate employments—Prevention of accidents and occupational diseases.**—The state board of labor and industries and the industrial accident board, sitting jointly, shall investigate from time to time employments and places of employment within the commonwealth, and determine what suitable safety devices or other reasonable means or requirements for the prevention of accidents shall be adopted or followed in any or all such employments or places of employment; and also shall determine what suitable devices or other reasonable means or requirements for the prevention of industrial or occupational diseases shall be adopted or followed in any or all such employments or places of employment; and shall make reasonable rules, regulations and orders for the prevention of accidents and the prevention of industrial or occupational diseases in such employments or places of employment. Such rules, regulations and orders may apply to both employer and employee.

§ 2. **Hearing before adoption of regulation.**—Before the adoption of any rule or regulation by the said joint board a hearing shall be given, and not less than ten days before the hearing a notice thereof shall be published in at least three newspapers, of which one shall be published in the city of Boston. Such rules or regulations shall upon adoption be published in like manner, and shall take effect thirty days after such publication, or at such later time as the board may fix. Before the adoption of any order a hearing shall be given thereon, of which a notice of not less than ten days shall be given to the individuals, firms, corporations or associations affected thereby.

§ 3. **Appointment of committees.**—The joint board may appoint committees, on which employers and employees shall be represented, to investigate and recommend rules and regulations.

§ 4. **To prevent duplication of inspection and investigation.**—The joint board shall make such general arrangements between the two boards as will prevent duplication of effort but the inspection and investigation carried on by the state board of labor and industries shall be a regular and systematic inspection and investigation of all places of employment and the conditions of safety and health pertaining thereto, and the inspection and investigation carried on by the industrial accident board shall be that relating to causes of injuries for which compensation may be claimed.

§ 5. **Right to enter places of employment.**—Any member or employee of either board may enter any place of employment for any purpose under this act at any time when the place of employment is being used for business purposes.

⁵ See chapter 308, General Acts of 1916.

§ 6. Physicians may be required to report diseases.—The joint board may require every physician treating a patient whom he believes to be suffering from any ailment or disease contracted as a result of the nature, circumstances or conditions of the patient's employment to report such information relating thereto as it may require, within such time as it may fix, to the state board of labor and industries, and it may issue a list of such diseases which shall be regularly reported upon by physicians and may add to or change such list at any time. Copies of all such reports and all statistics and data compiled therefrom shall be kept by the state board of labor and industries, and shall be furnished on request to the industrial accident board and the state board of health.

§ 7. Hearings open to the public.—All hearings by the joint board shall be open to the public. The chairman of the state board of labor and industries and the chairman of the industrial accident board shall act alternately as chairman of the joint board, and the said board may designate one of the employees of either board to act as secretary.

§ 8. Amendment.—Section eight of chapter seven hundred and twenty-six of the acts of the year nineteen hundred and twelve is hereby amended by adding at the end of the first paragraph thereof the words:—or persons especially qualified by technical education in matters relating to health and sanitation.

§ 9. Industrial Accident Board inspectors.—The industrial accident board may appoint and remove not more than six inspectors, subject to the laws relating to the appointment and removal of employees in the classified civil service. They shall be required to pass examinations of a comprehensive and practical character based upon the particular requirements of the kinds of work to be done, shall be graded in such manner as the board may deem expedient, and shall receive such salaries as the board, with the approval of the governor and council, may fix.

§ 10. Joint board rules or regulations control.—If any rule or regulation made under authority of section eighteen of Part IV of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven conflicts with or differs from a rule or regulation of the joint board, the rule or regulation of the joint board shall prevail.

§ 11. Annual appropriation.—There may be expended annually by the joint board in carrying out the provisions of this act such sums as the general court may appropriate. The joint board shall annually submit to the auditor of the commonwealth such statements of estimates to cover its expenses as are required by section three of chapter seven hundred and nineteen of the acts of the year nineteen hundred and twelve.

§ 12. Definitions.—The following terms and phrases, as used in this act, shall have the following meanings:—

(a) The term "employment" shall mean and include any trade, occupation or branch of industry, any particular method or process used therein, and the service of any particular employer; but shall not include private domestic service or service as a farm laborer.

(b) The phrase "place of employment" shall mean and include every place whether indoors or out or underground and the premises appurtenant thereto, into, in or upon which any employee goes or remains either temporarily or regularly in the course of his employment.

(c) The terms "safe" and "safety," as used in this act, shall be held to relate to such freedom from danger to the life, safety and health of employees as the nature of the employment will reasonably permit.

(d) The terms "industrial disease" and "occupational disease" shall mean and include any ailment or disease caused by the nature, circumstances or conditions of the employment.

§ 13. **Violation of regulations.**—Whoever violates any reasonable rule, regulation, order or requirement made by the joint board under authority hereof, shall be punished by a fine of not more than one hundred dollars for each offence.

§ 14. **All acts inconsistent herewith repealed.**—All acts and parts of acts inconsistent herewith are hereby repealed; but this provision shall not be construed to take away any of the existing powers of the industrial accident board, the board of railroad commissioners, the state board of health, the board of boiler rules, the boiler inspection department of the district police, or the building inspection department of the district police or any power given to the state board of labor and industries by chapter seven hundred and twenty-six of the acts of the year nineteen hundred and twelve.

§ 15. **When effective.**—This act shall take effect upon its passage. [Approved June 16, 1913.]

(Chapter 308, General Acts of 1916.)

An Act to Transfer to the State Board of Labor and Industries Certain Powers and Duties Heretofore Exercised Jointly by Such Board and the Industrial Accident Board.

Be it enacted, etc., as follows:

§ 1. **Transfer of powers and duties.**—The powers and duties of the state board of labor and industries and the industrial accident board, sitting jointly, in accordance with the provisions of chapter eight hundred and thirteen of the acts of the year nineteen hundred and thirteen, are hereby transferred to the state board of labor and industries.

§ 2. **When effective.**—This act shall take effect upon its passage. [Approved June 2, 1916.]

(Chapter 183, General Acts of 1915.)

An Act to Secure Prompt Payment of Workmen's Compensation Benefits When a Foreign Insurance Company Withdraws from this Commonwealth.

Be it enacted, etc., as follows:

§ 1. **Insurers withdrawing shall deposit certain sums—Such sums shall be used to pay obligations.**—Every foreign insurance company transacting the business of workmen's compensation insurance in this commonwealth shall within five days after its withdrawal from the transaction of business herein, or after the revocation of its license issued by the insurance commissioner or of his refusal to renew the same, deposit with a trustee to be named by the industrial accident board, an amount equal to twenty-five per cent. of its obligations, incurred or to be incurred, under workmen's compensation policies issued to employers in this commonwealth, and within thirty days after such withdrawal, revocation of license or refusal to renew a license, such company shall deposit with said trustee an amount equal to the

remainder of such obligations, incurred or to be incurred the amount of which obligations shall be determined by the industrial accident board. The amounts so deposited shall be available for the payment of the said obligations of the company to the same extent as if the company had continued to transact business in this commonwealth, and it shall be the duty of the trustee so receiving said deposits to pay such obligations of the retiring company at the times and in a manner satisfactory to the industrial accident board.

§ 2 [as amended by General Acts of 1916, c. 29, § 1]. Bond shall be furnished.—Every such foreign insurance company shall, within sixty days after the passage of this act, furnish a bond running to the commonwealth, with some surety company authorized to transact business in this commonwealth as surety, for such term and such amount and in such form and with such surety as may be approved by the insurance commissioner, the bond being conditioned upon the making by such company of the deposits required by section one of this act. The annual license of such a company shall not be issued or renewed until it has filed with the insurance commissioner a bond as aforesaid covering a future period at least as long as that covered by the license. In place of a bond as aforesaid the company may furnish other security, upon a like condition, satisfactory to the insurance commissioner. [In effect March 8, 1916.]

§ 3. When effective.—This act shall take effect upon its passage. [Approved April 19, 1915.]

(Chapter 244, General Acts of 1915.)

An Act to Fix Responsibility for the Payment of Workmen's Compensation by the Commonwealth and by Counties, Cities, Towns and Districts.

Be it enacted, etc., as follows:

§ 1. Agent shall be designated.—Every board, commission and department of the commonwealth employing laborers, workmen and mechanics, the Boston transit commission, and every county, city, town and district which has accepted the provisions of chapter eight hundred and seven of the acts of the year nineteen hundred and thirteen shall, through its executive officer or board, designate a person to act as its agent in furnishing the benefits due under chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven and acts in amendment thereof and in addition thereto. Such agent shall be held responsible for the proper carrying out of this act under the direction and supervision of the industrial accident board until his agency is revoked and a new agent designated. The name and address of every such agent shall be filed with the industrial accident board immediately upon his designation; and each of the foregoing boards, commissions, departments, counties, cities, towns and districts shall designate such an agent within thirty days after this act takes effect.

§ 2. Agent not to be appointed if insured.—This act shall not apply to counties, cities, towns and districts which are insured under the provisions of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven and acts in amendment thereof.

§ 3. When effective.—This act shall take effect on the first day of June, in the year nineteen hundred and fifteen. [Approved May 10, 1915.]

(Chapter 270, Special Acts of 1915.)

An Act Relative to the Compensation for Injuries to Workmen and Mechanics in the Employ of the Boston Transit Commission.

Be it enacted, etc., as follows:

§ 1. **Compensation to laborers, workmen and mechanics of Boston Transit Commission.**—Section one of chapter six hundred and thirty-six of the acts of the year nineteen hundred and fourteen is hereby amended by inserting after the word "laborers," in the first and ninth lines, the words:—workmen and mechanics,—so as to read as follows:—Section 1. Laborers, workmen and mechanics employed by the Boston transit commission shall be deemed to be in the service of the city of Boston within the provisions of chapter eight hundred and seven of the acts of the year nineteen hundred and thirteen, and shall be entitled to compensation provided for by that act. Such compensation shall be paid out of the proceeds of the rapid transit loans and shall be included in the net cost of the tunnel or subway in the construction of which such laborers, workmen and mechanics receive personal injuries arising out of and in the course of their employment.

§ 2. **When effective.**—This act shall take effect upon its passage. [Approved April 12, 1915.]

(Chapter 287, General Acts of 1915.)

An Act Providing that Workmen's Compensation Insurance Policies shall be Subject to Approval by the Insurance Commissioner.

Be it enacted, etc., as follows:

§ 1. **Compensation insurance separate.**—Every policy of workmen's compensation insurance issued or delivered in this commonwealth shall cover separately and for a separate consideration all the liabilities which are imposed upon an insurer by the provisions of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven and amendments thereof, whatever other contingencies may be insured by riders attached thereto or endorsements made thereon. On the face of every such policy there shall be printed conspicuously the words: "Insurance under this policy is in Class _____ of the company's Workmen's Compensation Classification Manual", and in the blank thus provided the number or other designation in said manual under which the said policy is written shall be placed before the policy is issued.

§ 2. **Insurance policies subject to approval of insurance commissioner.**—No such policy of insurance or rider to be used therewith shall be issued or delivered until a copy thereof has been filed with the insurance commissioner at least thirty days prior to such issue or delivery, unless before the expiration of the thirty days the said commissioner shall have approved the form of the policy in writing; nor if the insurance commissioner notifies the company in writing that in his opinion the form of said policy or rider does not comply with the laws of this commonwealth, specifying the reasons for his opinion: provided, that upon petition of the company the opinion of the insurance commissioner shall be subject to review by the supreme judicial court of this commonwealth.

§ 3. **When effective.**—This act shall take effect on the first day of July, in the year nineteen hundred and fifteen. [Approved May 27, 1915.]

*(Chapter 200, General Acts of 1916.)***An Act Relative to Workmen's Compensation and Liability Insurance.**

Be it enacted, etc., as follows:

§ 1. **Workmen's compensation and liability insurance.**—Any mutual liability company authorized to do business in this commonwealth may, with the approval of the insurance commissioner, have and exercise any or all of the rights, powers and privileges relating to the transaction of the business of workmen's compensation insurance by law vested in or conferred upon the Massachusetts Employees Insurance Association.

§ 2. **Association to have same powers and liabilities as mutual companies.**—The Massachusetts Employees Insurance Association may with the approval of the insurance commissioner have and exercise, within or without the commonwealth, all of the rights, powers and privileges vested in or conferred upon domestic mutual liability companies under general laws, and shall be subject to all the laws now or hereafter in force relating to such companies.

§ 3. **When effective.**—This act shall take effect upon its passage. [Approved May 12, 1916.]

*(Chapter 75, Resolves of 1916.)***Resolve Directing the Board of Education to Investigate the Subject of Special Training for Injured Persons.**

Board of education to investigate special training for injured.—Resolved, That the board of education is hereby directed to ascertain, and to report to the next general court, on or before the second Tuesday of January, what facilities exist in this commonwealth and what provisions have been made to give special training and instruction to persons who have suffered the loss of sight, or loss of or injury to a limb, or other severe injury, and whose earning capacity has been destroyed or impaired thereby, for the purpose of re-establishing or increasing the ability of such persons to earn a livelihood, and also to investigate and report what provision has been made or opportunity furnished for the objects aforesaid in other states and in foreign countries. The board shall include in its report a statement of its opinion as to the advisability of action on the part of the commonwealth to establish or extend means for training and instruction as aforesaid, and shall submit drafts of such legislation, if any, as the board may deem expedient in the premises. [Approved May 1, 1916.]

MICHIGAN

EMPLOYERS' LIABILITY AND WORKMEN'S COMPENSATION ACT

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EMPLOYERS' LIABILITY AND WORKMEN'S COMPENSATION ACT

(*P. A. 1st Ex. Sess. 1912, Act No. 10, p. 20, amended and added to; P. A. 1913, Act No. 50, p. 73; P. A. 1915, Act No. 136, p. 222; P. A. 1915, No. 153, p. 255; P. A. 1915, Act No. 170, p. 282; P. A. 1915, Act No. 182, p. 308.*)

An Act to promote the welfare of the people of this state, relating to the liability of employers for injuries or death sustained by their employes, providing compensation for the accidental injury to or death of employes and methods for the payment of the same, establishing an industrial accident board, defining its powers, providing for a review of its awards, making an appropriation to carry out the provisions of this act, and restricting the right to compensation or damages in such cases to such as are provided by this act.

The People of the State of Michigan enact:

PART I.—MODIFICATION OF REMEDIES.

§ 1. **Removal of defences.**—In an action to recover damages for personal injury sustained by an employe in the course of his employment, or for death resulting from personal injuries so sustained, it shall not be a defence:

(a) That the employe was negligent, unless and except it shall appear that such negligence was willful;

(b) That the injury was caused by the negligence of a fellow employe;

(c) That the employe had assumed the risks inherent in or incidental to, or arising out of his employment, or arising from the failure of the employer to provide and maintain safe premises and suitable appliances.

§ 2. **Exceptions.**—The provisions of section one shall not apply to actions to recover damages for personal injuries sustained by household domestic servants and farm laborers.

§ 3. **Election by employer.**—The provisions of section one shall not apply to actions to recover damages for the death of, or for personal injuries sustained by employes of any employer who has elected, with the approval of the industrial accident board hereinafter created, to pay compensation in the manner and to the extent hereinafter provided.

§ 4. **Exclusive remedy.**—Any employer who has elected with the approval of the industrial accident board hereinafter created to pay compensation as hereinafter provided shall not be subject to the provisions of section one; nor shall such employer be subject to any other liability whatsoever save as herein provided for the death of or personal injury to any employe, for which death or injury compensation is recoverable under this act, except as to employes who have elected in the manner hereinafter provided not to become subject to the provisions of this act.

§ 5. **Employer defined.**—The following shall constitute employers subject to the provisions of this act:

1. The state, and each county, city, township, incorporated village and school district therein, and each incorporated public board or public commission in this state authorized by law to hold property and to sue or be sued generally;

2. Every person, firm and private corporation, including any public service corporation, who has any person in service under any contract of hire, ex-

press or implied, oral or written, and who, at or prior to the time of the accident to the employé for which compensation under this act may be claimed, shall in the manner provided in the next section, have elected to become subject to the provisions of this act, and who shall not, prior to such accident, have effected a withdrawal of such election, in the manner provided in the next section. [Amd. P. A. 1913, Act 50.]

§ 6. Acceptance of the law.—Such election on the part of the employers mentioned in subdivision two of the preceding section, shall be made by filing with the industrial accident board hereinafter provided for, a written statement to the effect that such employer accepts the provisions of this act, and that he adopts, subject to the approval of said board, one of the four methods provided for the payment of the compensation hereinafter specified. The filing of such statement and the approval of said board shall operate, within the meaning of the preceding section, to subject such employer to the provisions of this act and all acts amendatory thereof for the term of one year from the date of the filing of such statement, and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall at least thirty days prior to the expiration of such first or any succeeding year, file in the office of said board a notice in writing to the effect that he desires to withdraw his election to be subject to the provisions of this act: Provided, however, That such employer so electing to become subject to the provisions of this act shall, within ten days after the approval by said board of his election filed as aforesaid, post in a conspicuous place in his plant, shop, mine or place of work, or if such employer be a transportation company, at its several stations and docks, notice in the form as prescribed and furnished by the industrial accident board to the effect that he accepts and will be bound by the provisions of this act.

§ 7. Employé defined.—The term "employé" as used in this act shall be construed to mean:

1. Every person in the service of the state, or of any county, city, township, incorporated village or school district therein, under any appointment, or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city, township, incorporated village or school district therein: Provided, That one employed by a contractor who has contracted with a county, city, township, incorporated village, school district or the state, through its representatives, shall not be considered an employé of the state, county, city, township, incorporated village or school district which made the contract;

2. Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the state who, for the purposes of this act, shall be considered the same and have the same power to contract as adult employés, but not including any person whose employment is but casual or is not in the usual course of the trade, business, profession or occupation of his employer.

§ 8. Employés subject to act.—Any employé as defined in subdivision one of the preceding section shall be subject to the provisions of this act and of any act amendatory thereof. Any employé as defined in subdivision two of the preceding section shall be deemed to have accepted and shall be subject to the provisions of this act and of any act amendatory thereof if, at the time of the accident upon which liability is claimed:

1. The employer charged with such liability is subject to the provisions of this act, whether the employé has actual notice thereof or not; and

2. Such employé shall not, at the time of entering into his contract of hire, express or implied, with such employer, have given to his employer notice in writing that he elects not to be subject to the provisions of this act; or, in the event that such contract of hire was made before such employer became subject to the provisions of this act, such employé shall have given to his employer notice in writing that he elects not to be subject to such provisions, or without giving either of such notices shall have remained in the service of such employer for thirty days after the employer has filed with said board an election to be subject to the terms of this act. An employé who has given notice to his employer in writing as aforesaid that he elects not to be subject to the provisions of this act, may waive such claim by a notice in writing, which shall take effect five days after it is delivered to the employer or his agent.

PART II.—COMPENSATION

§ 1. **To whom paid.**—If an employé who has not given notice of his election not to be subject to the provisions of this act, as provided in part one, section eight, or who has given such notice and has waived the same as hereinbefore provided, receives a personal injury arising out of and in the course of his employment by an employer who is at the time of such injury subject to the provisions of this act, he shall be paid compensation in the manner and to the extent hereinafter provided, or in case of his death resulting from such injuries such compensation shall be paid to his dependents as hereinafter defined.

§ 2. **Wilful misconduct.**—If the employé is injured by reason of his intentional and wilful misconduct, he shall not receive compensation under the provisions of this act.

§ 3. **When to begin.**—No compensation shall be paid under this act for any injury which does not incapacitate the employé for a period of at least two weeks from earning full wages, but if incapacity extends beyond the period of two weeks, compensation shall begin on the fifteenth day after the injury: Provided, however, That if such disability continues for eight weeks or longer, such compensation shall be computed from the date of the injury.

§ 4. **Medical services.**—During the first three weeks after the injury the employer shall furnish, or cause to be furnished, reasonable medical and hospital services and medicines when they are needed.

§ 5. **In case of death.**—If death results from the injury, the employer shall pay, or cause to be paid, subject, however, to the provisions of section twelve hereof, in one of the methods hereinafter provided, to the dependents of the employé, wholly dependent upon his earnings for support at the time of the injury, a weekly payment equal to one-half his average weekly wages, but not more than ten dollars nor less than four dollars a week for a period of three hundred weeks from the date of the injury. If the employé leaves dependents only partly dependent upon his earnings for support at the time of his injury, the weekly compensation to be paid as aforesaid shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employé to such partial dependents bears to the annual earnings of the deceased at the time of his injury. When weekly payments have been made to an injured employé before

his death the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred weeks from the date of the injury.

§ 6. Dependents.—The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employé:

- (a) A wife upon a husband with whom she lives at the time of his death;
- (b) A husband upon a wife with whom he lives at the time of her death;
- (c) A child or children under the age of sixteen years (or over said age, if physically or mentally incapacitated from earning) upon the parent with whom he is or they are living at the time of the death of such parent, there being no surviving parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them. In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof; if there is no one wholly dependent and more than one person partly dependent, the death benefit shall be divided among them according to the relative extent of their dependency. No person shall be considered a dependent, unless a member of the family of the deceased employé, or bears to him the relation of husband or widow, or lineal descendant, or ancestor, or brother, or sister.

§ 7. Dependents, how determined.—Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the accident to the employé, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions; and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto, or their legal guardians or trustees. In case of the death of one such dependent his proportion of such compensation shall be payable to the surviving dependents pro rata. Upon the death of all such dependents compensation shall cease. No person shall be excluded as a dependent who is a non-resident alien. No dependent of an injured employé shall be deemed, during the life of such employé, a party in interest to any proceeding by him for the enforcement of collection of any claim for compensation, nor as respects the compromise thereof by such employé.

§ 8. Funeral expenses.—If the employé leaves no dependents the employer shall pay, or cause to be paid as hereinafter provided, the reasonable expense of his last sickness and burying, which shall not exceed two hundred dollars.

§ 9. Total disability.—While the incapacity for work resulting from the injury is total, the employer shall pay, or cause to be paid as hereinafter provided, to the injured employé a weekly compensation equal to one-half his average weekly wages, but not more than ten dollars nor less than four dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks, nor shall the total amount of all compensation exceed four thousand dollars.

§ 10. Partial disability—Schedule.—While the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid as hereinafter provided, to the injured employé a weekly compensation equal to one-half the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not

more than ten dollars a week; and in no case shall the period covered by such compensation be greater than three hundred weeks from the date of the injury. In cases included by the following schedule the disability in each such case shall be deemed to continue for the period specified, and the compensation so paid for such injury shall be as specified therein, to-wit:

For the loss of a thumb, fifty per centum of the average weekly wages during sixty weeks;

For the loss of a first finger, commonly called index finger, fifty per centum of average weekly wages during thirty-five weeks;

For the loss of a second finger, fifty per centum of average weekly wages during thirty weeks;

For the loss of a third finger, fifty per centum of average weekly wages during twenty weeks;

For the loss of a fourth finger, commonly called little finger, fifty per centum of average weekly wages during fifteen weeks;

The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of one-half of such thumb, or finger, and compensation shall be one-half the amounts above specified;

The loss of more than one phalange shall be considered as the loss of the entire finger or thumb: Provided, however, That in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand;

For the loss of a great toe, fifty per centum of average weekly wages during thirty weeks;

For the loss of one of the toes other than a great toe, fifty per centum of average weekly wages during ten weeks;

The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified;

The loss of more than one phalange shall be considered as the loss of the entire toe;

For the loss of a hand, fifty per centum of average weekly wages during one hundred and fifty weeks;

For the loss of an arm, fifty per centum of average weekly wages during two hundred weeks;

For the loss of a foot, fifty per centum of average weekly wages during one hundred and twenty-five weeks;

For the loss of a leg, fifty per centum of average weekly wages during one hundred and seventy-five weeks;

For the loss of an eye, fifty per centum of average weekly wages during one hundred weeks;

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability, to be compensated according to the provisions of section nine.

The amounts specified in this clause are all subject to the same limitations as to maximum and minimum as above stated.

§ 11. Average weekly wages defined.—The term "average weekly wages" as used in this act is defined to be one fifty-second part of the average annual earnings of the employé. If the injured employé has not worked in the employment in which he was working at the time of the accident, whether

for the employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he has earned in such employment during the days when so employed. If the injured employé has not worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employé of the same class working substantially the whole of such immediately preceding year in the same or a similar employment in the same or a neighboring place, shall have earned in such employment during the days when so employed. In cases where the foregoing methods of arriving at the average annual earnings of the injured employé cannot reasonably and fairly be applied, such annual earnings shall be taken at such sum as, having regard to the previous earnings of the injured employé, and of other employés of the same or most similar class, working in the same or most similar employment, in the same or neighboring locality, shall reasonably represent the annual earning capacity of the injured employé at the time of the accident in the employment in which he was working at such time. The fact that an employé has suffered a previous disability, or received compensation therefor, shall not preclude compensation for the later injury, or for death, but in determining compensation for the later injury, or death, his average annual earnings shall be such sum as will reasonably represent his annual earning capacity at the time of the later injury in the employment in which he was working at such time, and shall be arrived at according to and subject to the limitations of the provisions of this section. The weekly loss in wages referred to in this act shall consist of such percentage of the average weekly earnings of the injured employé, computed according to the provisions of this section, as shall fairly represent the proportionate extent of the impairment of his earning capacity in the employment in which he was working at the time of the accident, the same to be fixed as of the time of the accident, but to be determined in view of the nature and extent of the injury.

§ 12. Death of employé receiving compensation.—The death of the injured employé prior to the expiration of the period within which he would receive such weekly payments shall be deemed to end such disability, and all liability for the remainder of such payments which he would have received in case he had lived shall be terminated, but the employer shall thereupon be liable for the following death benefits in lieu of any further disability indemnity:

If the injury so received by such employé was the proximate cause of his death, and such deceased employé leaves dependents, as hereinbefore specified, wholly or partially dependent on him for support, the death benefit shall be a sum sufficient, when added to the indemnity which shall at the time of death have been paid or become payable under the provisions of this act to such deceased employé, to make the total compensation for the injury and death exclusive of medical and hospital services and medicines furnished as provided in section four hereof, equal to the full amount which such dependents would have been entitled to receive under the provisions of section five hereof in case the accident had resulted in immediate death, and such benefits shall be payable in weekly installments in the same manner and subject to the same terms and conditions in all respects as payments made under the provisions of said section five.

§ 13. **Savings not to be considered.**—No savings or insurance of the injured employé, nor any contribution made by him to any benefit fund or protective association independent of this act, shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any other source than those paid or caused to be paid by the employer as herein provided, be considered in fixing the compensation under this act.

§ 14. **Incompetents or minors.**—If an injured employé is mentally incompetent or is a minor at the time when any right or privilege accrues to him under this act, his guardian or next friend may in his behalf claim and exercise such right or privilege.

§ 15. **Notice of injury or death and claim for compensation.**—No proceedings for compensation for an injury under this act shall be maintained, unless a notice of the injury shall have been given to the employer three months after the happening thereof, and unless the claim for compensation with respect to such injury shall have been made within six months after the occurrence of the same; or, in case of the death of the employé, or in the event of his physical or mental incapacity, within six months after death or the removal of such physical or mental incapacity.

§ 16. **Form of notice.**—The said notice shall be in writing, and shall state in ordinary language the time, place and cause of the injury; and shall be signed by the person injured, or by a person in his behalf, or, in the event of his death, by his dependents or by a person in their behalf.

§ 17. **How served.**—The notice shall be served upon the employer or an agent thereof. Such service may be made by delivering said notice to the person on whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to the person or corporation on whom it is to be served, at his last known residence or place of business.

§ 18. **Inaccuracies in notice not bar.**—A notice given under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place or cause of the injury, unless it is shown that it was the intention to mislead, and the employer, or the insurance company carrying such risk, or the commissioner of insurance, as the case may be, was in fact misled thereby. Want of such written notice shall not be a bar to proceedings under this act, if it be shown that the employer had notice or knowledge of the injury.

§ 19. **Examination of employé.**—After an employé has given notice of an injury, as provided by this act, and from time to time thereafter during the continuance of his disability, he shall, if so requested by the employer, or the insurance company carrying such risk, or the commissioner of insurance, as the case may be, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the state, furnished and paid for by the employer, or the insurance company carrying such risk, or the commissioner of insurance, as the case may be. The employé shall have the right to have a physician provided and paid for by himself present at the examination. If he refuses to submit himself for the examination, or in any way obstructs the same, his right to compensation shall be suspended, and his compensation during the period of suspension may be forfeited. Any

physician who shall make or be present at any such examination may be required to testify under oath as to the results thereof.

§ 20. **No waiver.**—No agreement by an employé to waive his rights to compensation under this act shall be valid.

§ 21. **No assignment or garnishment.**—No payment under this act shall be assignable or subject to attachment or garnishment, or be held liable in any way for any debts. In case of insolvency every liability for compensation under this act shall constitute a first lien upon all the property of the employer liable therefor, paramount to all other claims or liens except for wages and taxes, and such liens shall be enforced by order of the court.

§ 22. **Lump sum.**—Whenever any weekly payment has been continued for not less than six months, the liability therefor may be redeemed by the payment of a lump sum by agreement of the parties, subject to the approval of the industrial accident board, and said board may at any time direct in any case, if special circumstances be found which in its judgment require the same, that the deferred payments be commuted on the present worth thereof at five per cent. per annum to one or more lump sum payments, and that such payments shall be made by the employer or the insurance company carrying such risk, or commissioner of insurance, as the case may be.

§ 23. **Boards and Commissions.**—All compensation paid or to be paid under this act by any employer, being an incorporated public board, or public commission shall be treated as part of the necessary operating expenses thereof, and all sums and amounts of money required therefor may be embraced in any requisition authorized by law to be made upon any other public corporation, body or officer for moneys for the use of such employer in addition to all other sums authorized by law, or separate requisition therefor may be made in like manner; and the same shall be allowed and paid to such employer in the same manner as other moneys are required to be allowed and paid for the use of such employer; or the same may be embraced in any report or requirement authorized by law to be made to or upon any other public corporation, or officer, of sums of money to be levied as taxes for the use of such employer, in addition to all other sums authorized by law, or separate report or requirement thereof may be made in like manner; and the same shall be levied, collected and paid as other amounts for taxes are required to be levied, collected and paid for the use of such employer. [Added by P. A. 1913, Act 50.]

PART III.—PROCEDURE

§ 1. **Industrial Accident Board.**—There is hereby created a board which shall be known as the Industrial Accident Board, consisting of three members to be appointed by the governor, by and with the consent of the senate, one of whom shall be designated by the governor as chairman. Appointments to fill vacancies may be made during recesses of the senate, but shall be subject to confirmation by the senate at the next ensuing session of the legislature. The term of office of members of this board shall be six years, except that when first constituted one member shall be appointed for two years, one for four years, and one for six years. Thereafter one member shall be appointed every second year for the full term of six years. No more than two members of this board shall belong to the same political party.

§ 2. **Salaries and expenses.**—The salary of each of the members so appointed by the governor shall be three thousand five hundred dollars per year.

The board may appoint a secretary at a salary of not more than two thousand five hundred dollars a year, and may remove him. The board shall be provided with an office in the capitol, or in some other suitable building in the city of Lansing, in which its records shall be kept, and it shall also be provided with necessary office furniture, stationery and other supplies. It shall provide itself with a seal for the authentication of its orders, awards and proceedings, upon which shall be inscribed the words "Industrial Accident Board—Michigan—Seal." It shall employ such assistants and clerical help as it may deem necessary and fix the compensation of all persons so employed: Provided, That the average compensation paid to such employes shall not exceed one thousand dollars per annum for each person employed, and all such clerical assistants shall be subject to existing laws regulating the grading and compensation of department clerks. The members of the board and its assistants shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the board; but such expenses shall be sworn to by the person who incurred the same, and be approved by the chairman of the board before payment is made.

All such salaries and expenses when audited and allowed by the board of state auditors, shall be paid by the state treasurer out of the general fund, upon warrant of the auditor general.

§ 3. Rules.—The board may make rules not inconsistent with this act for carrying out the provisions of the act. Process and procedure under this act shall be as summary as reasonably may be. The board or any member thereof shall have the power to administer oaths, subpoena witnesses and to examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute.

§ 4. Blanks and records.—The board shall cause to be printed and furnish free of charge to any employer or employe such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act; it shall provide a proper record book in which shall be entered and indexed the name of any employer who shall file a statement of election under this act, and the date of the filing thereof and its approval by such board, and a separate book in which shall be entered and indexed the name of every employer who shall file his notice of withdrawal of said election, and the date of the filing thereof; and books in which shall be recorded all orders and awards made by the board; and such other books or records as it shall deem required by the proper and efficient administration of this act; all such records to be kept in the office of the board. Upon the filing of a statement of election by an employer to become subject to the provisions of this act, the board shall forthwith cause such notice of the fact to be given by requiring said employer to post such notice as hereinbefore provided; and the board shall likewise cause notice to be given of the filing of any withdrawal of such election; but notwithstanding the failure to give, or the insufficiency of, any such notice, knowledge of all filed statements of election and notices of withdrawal of election, and of the time of the filing of the same, shall conclusively be imputed to all employes.

§ 5. Agreements as to compensation.—If the employer, or the insurance company carrying such risk, or commissioner of insurance, as the case may be, and the injured employe reach an agreement in regard to compensation under this act, a memorandum of such agreement shall be filed with the

industrial accident board, and, if approved by it, shall be deemed final and binding upon the parties thereto. Such agreements shall be approved by said board only when the terms conform to the provisions of this act.

§ 6. Committee of arbitration.—If the employer, or the insurance company carrying such risk, or the commissioner of insurance, as the case may be, and the employé fail to reach an agreement in regard to compensation under this act, either party may notify the industrial accident board, who shall thereupon call for the formation of a committee of arbitration. The committee of arbitration shall consist of three members, one of whom shall be a member of the industrial accident board, and shall act as chairman. The other two members shall be named respectively by the two parties.

§ 7. Appointment of arbitrators.—It shall be the duty of the industrial accident board, upon notification that the parties have failed to reach an agreement, to request both parties to appoint their respective representatives on the committee of arbitration. The board shall designate one of its members to act as chairman, and, if either party does not appoint its member on this committee within seven days after notification as above provided, the board or any member thereof shall fill the vacancy and notify the parties to that effect.

§ 8. Arbitration proceedings.—The committee of arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings of the committee shall be held at the locality where the injury occurred, and the decision of the committee shall be filed with the industrial accident board. Unless a claim for a review is filed by either party within seven days, the decision shall stand as the decision of the industrial accident board: Provided, That said industrial accident board may, for sufficient cause shown, grant further time in which to claim such review.

§ 9. Impartial physician.—The industrial accident board or any member thereof may appoint a duly qualified impartial physician to examine the injured employé and to report. The fee for this service shall be five dollars and traveling expenses, but the board may allow additional reasonable amounts in extraordinary cases.

§ 10. Compensation and fees of arbitrators.—The arbitrators named by or for the parties to the dispute shall each receive five dollars a day for his services, but the industrial accident board or any member thereof may allow additional reasonable amounts in extraordinary cases. The fees of such arbitrators and other costs of such arbitration, not exceeding, however, the taxable costs allowed in suits at law in the circuit courts of this state, shall be fixed by the board and paid by the state as the other expenses of the board are paid. The fees and the payment thereof of all attorneys and physicians for services under this act shall be subject to the approval of the industrial accident board.

§ 11. Review of decision.—If a claim for review is filed, as provided in part three, section eight, the industrial accident board shall promptly review the decision of the committee of arbitration and such records as may have been kept of its hearings, and shall also if desired hear the parties, together with such additional evidence as they may wish to submit, and file its decision therein with the records of such proceedings. Such review and hearing may be held in its office at Lansing or elsewhere as the board shall deem advisable.

§ 12. Findings of fact conclusive.—The findings of fact made by said industrial accident board acting within its powers, shall, in the absence of fraud, be conclusive, but the supreme court shall have power to review questions of law involved in any final decision or determination of said industrial accident board: Provided, That application is made by the aggrieved party within thirty days after such determination by certiorari, mandamus or by any other method permissible under the rules and practice of said court or the laws of this state, and to make such further orders in respect thereto as justice may require.

§ 13. Rendition of judgment by circuit court.—Either party may present a certified copy of the decision of such industrial accident board approving agreements of settlement as provided in part three, section five hereof, or of the decision of such committee of arbitration when no claim for review is made as provided in part three, section eight, or of the decision of such industrial accident board when a claim for review is filed as provided in part three, section eleven, providing for payment of compensation under this act, to the circuit court for the county in which such accident occurred, whereupon said court shall, without notice, render a judgment in accordance therewith against said employer and also against any insurance company carrying such risk under the provisions of this act; which judgment, until and unless set aside shall have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with like effect, be entered and docketed.

§ 14. Review.—Any weekly payment under this act may be reviewed by the industrial accident board at the request of the employer, or the insurance company carrying such risks, or the commissioner of insurance as the case may be, or the employé; and on such review it may be ended, diminished or increased, subject to the maximum and minimum amounts above provided, if the board finds that the facts warrant such action.

§ 15. Liability in person other than employer.—Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the employé may at his option proceed either at law against that person to recover damages, or against the employer for compensation under this act, but not against both, and if compensation be paid under this act the employer may enforce for his benefit or for that of the insurance company carrying such risk, or the commissioner of insurance, as the case may be, the liability of such other person.

§ 16. All questions settled by board.—All questions arising under this act, if not settled by agreement by the parties interested therein, shall, except as otherwise herein provided, be determined by the industrial accident board.

§ 17. Employer to keep record.—Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employés in the course of their employment. Within ten days after the occurrence of an accident resulting in personal injury a report thereof shall be made in writing to the industrial accident board on blanks to be procured from the board for that purpose. The said reports shall contain the name and nature of the business of the employer, the location of his establishment or place of work, the name, age, sex and occupation of the injured employé, and shall state the time,

the nature and cause of the injury, and such other information as may be required by the board. Any employer who refuses or neglects to make the report required by this section shall be punished by a fine of not more than fifty dollars for each offense.

§ 18. **Assistant secretary.**—The board may appoint an assistant secretary at a salary of not more than fifteen hundred dollars a year to be paid as other state employes are paid.

NOTE.—There is no section 19.

§ 20. **Deputy commissioners.**—The board may appoint not to exceed two deputy commissioners who shall hold office during its pleasure. Such deputy commissioners shall take and subscribe the constitutional oath of office, have power to administer oaths, certify official acts, take depositions, issue subpoenas to compel the attendance of witnesses and the production of books, accounts and papers, and under the direction of the board any such deputy may conduct an investigation, inquiry, hearing or arbitration in the same manner and with like effect as if done by a member of the board. The salary of such deputies shall be fixed by the board, not exceeding in any case eighteen hundred dollars per year.

PART IV.—METHOD OF PAYMENT.

§ 1. **Method of payment of compensation.**—Every employer filing his election to become subject to the provisions of this act, as hereinbefore set forth, shall have the right to specify at the time of doing so, subject to the approval of said industrial accident board, which of the following methods for the payment of such compensation he desires to adopt, to-wit:

First. Upon furnishing satisfactory proof to said board of his solvency and financial ability to pay the compensation and benefits herein before provided for, to make such payments directly to his employes, as they may become entitled to receive the same under the terms and conditions of this act; or

Second. To insure against such liability in any employers' liability company authorized to take such risks in the state of Michigan; or

Third. To insure against such liability in any employers' insurance association organized under the laws of the state of Michigan; or

Fourth. To request the commissioner of insurance of the state of Michigan to assume the administration of the disbursement of such compensation, and the collection of the premiums and assessments necessary to pay the same, as provided in part five hereof. Said board, however, shall have the right, from time to time to review and alter its decision in approving the election of such employer to adopt any one of the foregoing methods of payment, if in its judgment such action is necessary or desirable to secure and safeguard such payments to employes.

§ 2. **Existing liability.**—Nothing herein shall affect any existing contract for employers' liability insurance or affect the organization of any mutual or other insurance company, or any arrangement now existing between employers and employes, providing for the payment to such employes, their families, dependents or representatives, sick, accident or death benefits, in addition to the compensation provided for by this act. But liability for compensation under this act shall not be reduced or affected by any insurance, contribution or other benefit whatsoever, due to or received by the person entitled to such

compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer; and in addition thereto, the right to enforce in his own name in the manner provided in this act the liability of any insurance company or of any employers' association organized under the laws of the state of Michigan, or the commissioner of insurance, who may, in whole or in part, have insured the liability for such compensation: Provided, however, That payment in whole or in part of such compensation by either the employer, or the insurance company carrying such risk, or the commissioner of insurance, as the case may be, shall, to the extent thereof be a bar to recovery against the other, of the amount so paid.

§ 3. Insurance contracts subject to the act.—Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and provisions thereof inconsistent with this act shall be void. No company shall enter into any such contract for insurance, unless such company shall have been approved by the commissioner of insurance as provided by law.

§ 4. Liquidation of compensation.—Any employer against whom liability may exist for compensation under this act may, with the approval of the industrial accident board, be relieved therefrom by:

1. Depositing the present value of the total unpaid compensation for which such liability exists, assuming interest at three per centum per annum, with such trust company of this state as shall be designated by the employé, or by his dependents, in case of his death, and such liability exists in their favor, or in default of such designation by him, or them, after ten days' notice in writing from the employer, with such trust company of this state as shall be designated by the industrial accident board; or

2. By the purchase of an annuity, within the limitations provided by law, in any insurance company granting annuities and licensed in this state, which may be designated by the employé, or his dependents, or the industrial accident board, as provided in subsection one of this section.

PART V.—ADMINISTRATION BY COMMISSIONER OF INSURANCE

§ 1. Premiums—Disbursements—Proviso.—Whenever five or more employers, who have become subject to the provisions of this act, and who have on their pay rolls an aggregate number of not less than three thousand employés, shall in writing request the commissioner of insurance so to do, he shall assume charge of levying and collecting from them such premium or assessments as may from time to time be necessary to pay the sums which shall become due their employés, or dependents of their employés, as compensation under the provisions of this act, and also the expense of conducting the administration of such funds; and shall disburse the same to the persons entitled to receive such compensation under the provisions of this act: Provided, however, That neither the commissioner of insurance nor the state of Michigan shall become or be liable or responsible for the payment of claims for compensation under the provisions of this act beyond the extent of the funds so collected and received by him as hereinafter provided.

§ 2. Same—Accident fund—Reserve—Proviso.—The commissioner of insurance shall immediately upon assuming the administration of the collection and disbursement of the moneys referred to in the preceding section,

cause to be created in the state treasury a fund to be known as "accident fund." Each such employer shall contribute to this fund to the extent of such premiums or assessments as the commissioner shall deem necessary to pay the compensation accruing under this act to employes of such employers or to their dependents, and also the expense of the administration of said accident fund, which premiums and assessments shall be levied in the manner and proportion hereinafter set forth. There shall be maintained in said accident fund a sufficient amount of cash to pay current losses and expenses, and the balance may be invested by the commissioner of insurance and the state treasurer acting together, in such securities as are specified in section four of act number seventy-seven of the public acts of eighteen hundred sixty-nine, for deposit by insurance companies with the state treasurer. All such securities shall be purchased and may be sold at such time, in such manner and in accordance with such rules and conditions as may be prescribed and required by the joint action of said insurance commissioner and state treasurer: Provided, however, That no such investment shall be made nor any securities sold or disposed of except by and with the consent and approval in writing of the board of state auditors. The commissioner of insurance shall give a good and sufficient bond in the sum of twenty-five thousand dollars, executed by some surety company authorized to do business in the state of Michigan, covering the collection and disbursement of all moneys that may come into his hands under the provisions of this act. The premium on said bond shall be paid out of the general funds of the state on an order of the auditor general. Said bond must be approved by the board of state auditors.

§ 3. Same—Purpose—Readjustment.—It is the intention that the amounts raised for such fund shall ultimately become neither more nor less than self-supporting, and the premiums or assessments levied for such purpose shall be subject to readjustment from time to time by the commissioner of insurance as may become necessary.

§ 4. Same—Classification—Change.—The commissioner of insurance may classify the establishments or works of such employers in groups in accordance with the nature of the business in which they are engaged and the probable risk of injury to their employes under existing conditions. He shall determine the amount of the premiums or assessments which such employers shall pay to said accident fund, and may prescribe when and in what manner such premiums and assessments shall be paid, and may change the amount thereof both in respect to any or all of such employers from time to time, as circumstances may require, and the condition of their respective plants, establishments or places of work in respect to the safety of their employes may justify, but all such premiums or assessments shall be levied on a basis that shall be fair, equitable and just as among such employers.

§ 5. Same—When payable—Default.—All premiums or assessments shall be due and payable within forty-five days from the date on which the insurance became effective and formal demand for the payment of such premium shall be made within thirty days from said date. If any employer shall make default in the payment of any contribution, premium or assessment required as aforesaid by the commissioner of insurance, the insurance of such employer shall become void and the sum due for the period insured, shall be collected by an action at law in the name of the state as plaintiff and such right of ac-

tion shall be in addition to any other right of action or remedy. In case any injury happens to any of the workmen of such employer after the default in the payment of any such premium, assessment or contribution, the defaulting employer shall not, if such default be fifteen days after demand for payment, be entitled to the benefits of this act, but shall be liable to suit by the injured workman, or by his dependents in case death results from such accident, as if he had not elected to become subject to this act.

§ 6. Certificate—When insurance in force.—Every employer requesting insurance under the administration of the commissioner of insurance shall upon complying with the rules and regulations adopted by said commissioner of insurance, be furnished with a certificate showing the date on which such insurance becomes effective. Such insurance shall be in force for a period of one year, and may be renewed for subsequent periods of one year providing such employer shall have complied with all of the rules and regulations adopted by the commissioner of insurance.

§ 7. Controversies—Review.—In case any controversy shall arise between the commissioner of insurance and any employer subject to the provisions of part five of this act, relative to any rule or regulation adopted by said commissioner of insurance, or any decision made by him in respect to the collection, administration and disbursement of such funds, or in case any controversy shall arise between any employé claiming compensation under the provisions of this act and said commissioner of insurance, all such controversies of every kind and nature shall be subject to review in like manner and with the same force and effect in all respects as is heretofore provided in respect to differences arising through the administration of such funds by the employer, or by a liability insurance company or by an employers' mutual insurance association.

§ 8. Records of employer—False statement of pay roll—Criminal liability.—The books, records and pay rolls of each employer subject to the provisions of part five of this act shall always be open to inspection by the commissioner of insurance, or his duly authorized agent or representative, for the purpose of ascertaining the correctness of the amount of the pay roll reported, the number of men employed, and such other information as said commissioner may require in the administration of said funds. Refusal on the part of any such employer to submit said books, records and pay rolls for such inspection, shall subject the offending employer to a penalty of fifty dollars for each offense, to be collected by civil action in the name of the state and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor. Any such employer who shall knowingly submit to the commissioner of insurance a false statement of pay roll for the purpose of securing a lower premium charge, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than one hundred dollars, or imprisonment for not more than thirty days in the county jail or both such fine and imprisonment in the discretion of the court.

§ 9. Commissioner of insurance—Receipts and records—Assistants—Salaries and expenses—Annual report.—The commissioner of insurance shall issue proper receipts for all moneys so collected and received from employers, as aforesaid, shall take receipts for all sums paid to employés for compensation under the provisions of this act, and shall keep full and complete records of all business transacted by him in the administration of such funds.

He may employ such deputies and assistants and clerical help as may be necessary, and as the board of state auditors may authorize, for the proper administration of said funds and the performance of the duties imposed upon him by the provisions of this act, at such compensation as may be fixed by said board of state auditors, and may also remove them. The commissioner of insurance and such deputies and assistants shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the accident fund, but all such salaries and expenses so authorized by the provisions of this act shall, when audited and approved by the board of state auditors, be charged to and paid out of said accident fund. He shall include in his annual report a full and correct statement of the administration of such fund, showing its financial status and outstanding obligations, claims contested and why, and general statistics in respect to all business transacted by him under the provisions of this act.

§ 10. Payments—Certificate—Warrant.—All payments on account of injuries to employes from said accident fund shall be made only upon the certificate of the commissioner of insurance, which certificate shall be in accordance with the agreement for compensation as approved by the industrial accident board; such certificate shall be filed with the auditor general, who shall thereupon draw his warrant on the state treasurer against said accident fund.

§ 11. If Act repealed or fund dissolved.—If this act shall be hereafter repealed or (if it shall in the judgment of the commissioner of insurance become necessary to dissolve the accident fund), all moneys which are in the accident fund at such time shall be subject to disposition under the direction of the circuit court for the county of Ingham, with due regard, however, to the obligation incurred and existing to pay compensation under the provisions of this act.

PART VI.—MISCELLANEOUS PROVISIONS

§ 1. Employer released from claims at law.—If the employe, or his dependents, in case of his death, of any employer subject to the provisions of this act files any claim with, or accepts any payment from such employer, or any insurance company carrying such risks, or from the commissioner of insurance on account of personal injury, or makes any agreement, or submits any question to arbitration under this act, such action shall constitute a release to such employer of all claims or demands at law, if any, arising from such injury.

§ 2. In case certain sections repealed.—If the provisions of this act relating to compensation for injuries to or death of workmen shall be repealed or adjudged invalid or unconstitutional, the period intervening between the occurrence of an injury or death and such repeal, or the final adjudication of invalidity, shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death, but the amount of any compensation which may have been paid for any such injury shall be deducted from any judgment for damages recovered on account of such injury.

§ 3. Prior liability.—This act shall not affect any cause of action existing or pending before it went into effect.

§ 4. Intrastate and interstate commerce.—The provisions of this act shall apply to employers and workmen engaged in intrastate commerce, and

also to those engaged in interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, except that any such employer and any of his workmen working only in this state, may, subject to the approval of the industrial accident board, and so far as not forbidden by any act of congress, voluntarily accept and become bound by the provisions of this act in like manner and with the same force and effect in all respects as is hereinbefore provided for other employers and their workmen.

§ 5. **Repealing clause.**—All acts or parts of acts inconsistent with this act are to be deemed replaced by this act, and to that end are hereby repealed.

§ 6. **Part V separate.**—The legislature intends that part five of this act shall be deemed separate from the other parts thereof, so that if said part five should fail or be adjudged invalid or unconstitutional it shall in no way affect any other part of this act.

§ 7. **Appropriation.**—To carry out the provisions of this act there is hereby appropriated for the expenses of the industrial accident board for the fiscal year ending June thirty, nineteen hundred sixteen, and annually thereafter, the sum of forty-five thousand dollars. The auditor general shall add to and incorporate into the state tax, the sum of forty-five thousand dollars annually, which said sum shall be included in the state taxes apportioned by the auditor general on all taxable property of the state to be levied, assessed and collected as other state taxes, and when so assessed and collected, to be paid into the general fund to reimburse said fund for the appropriation made by this act.

[Amd. P. A. 1915, Act 170, p. 282.]

§ 8. **When effective.**—The provisions of this act shall take effect and be in force from and after September first, nineteen hundred twelve.

INSURANCE

(P. A. 1915, Act No. 182.)

An act to prevent discrimination in the classification of risks and in the premiums or allowances thereon made or charged by insurers insuring employers against the liability provided for by Act No. 10 of the Public Acts of 1912, First Extra Session, as amended, and to provide for the determination of such discrimination, and to provide a penalty for the violation of this act.

The People of the State of Michigan enact:

§ 1. **Premiums—Classification.**—Every employers' liability company and every employers' insurance association insuring employers against the liability provided for by Act No. 10 of the Public Acts of 1912, First Extra Session, as amended, shall file with the insurance commissioner of the state its classification of risks and normal premiums relating thereto together with any and all reasonable percentage of allowance made upon such premiums above or below the said normal premium for increased or diminished hazards in said classifications of risks. The classifications so filed shall be classifications upon which the insurer filing same shall classify its risks and the premiums and

percentage of allowances thereon shall be the premiums which must be charged by the insurer, filing same, on its risks until such classification and premiums and percentage allowances shall be changed as herein provided.

§ 2. **Discrimination.**—No insurer against liability provided for in this act shall fix any classification or allowance or charge any premium against liability under said Act No. 10 of the Public Acts of 1912 which is unreasonable or which discriminates unfairly between risks in the application of like charges and credits, or which discriminates unfairly between risks on essentially the same hazards and having substantially the same degree of protection against accident.

§ 3. **Deviation from classifications and schedules.**—Any deviation of any such insurer from the classifications and schedules of premiums and percentages relating hereto, as filed with the insurance commissioner shall be uniform in its application to all the risks in the class for which the deviation is made, and no such uniform deviation shall be made unless notice thereof shall be filed with the insurance commissioner of the state at least fifteen days before such uniform deviation is in effect.

§ 4. **Commission—Proceedings where discrimination charged.**—The state banking commissioner, the attorney general and the commissioner of insurance of this state shall constitute a commission, and upon written complaint or upon its own information that discrimination in classification of risks or in the normal premiums relating thereto, or in any percentage of allowance upon such premiums exist, or that any such classification of risks or that any premiums or any percentage of allowance upon such premiums discriminates between risks of essentially the same hazard and having substantially the same degree of protection against accident, the commission may order a hearing for the purpose of determining such questions of discrimination and the review of such classification of risks, such premiums or such percentage allowance before said commission shall be had only after due notice to all parties interested, and if upon such hearing the commission shall determine that said classification, such premium or premiums or such percentage allowance is or are discriminatory, it shall have power to order the discrimination removed. Any party in interest being dissatisfied with any order of the commission may within thirty days from the issuance of such order and notice thereof commence an action in the circuit court in chancery for the county of Ingham against the commission, as defendant, to vacate and set aside any such order upon the ground that such order is unlawful or unreasonable; in which suit the commission shall be served with a subpoena and a copy of the complaint. The commission shall file its answer and on leave of court any interested party may file an answer to said complaint. Upon the filing of the answer of the commission said action shall be at issue and stand ready for hearing upon ten days' notice by either party. The said circuit court for the county of Ingham in chancery is hereby given jurisdiction of such suits and empowered to affirm, vacate or set aside the order of the commission in whole or in part, and to make such other order or decree as the court shall decide to be in accordance with the facts and the law. During pendency of such proceedings the order shall be suspended, and in the event of final determination against any insurer, any over-charge during the pendency of such proceedings shall be refunded by the insurer to the persons entitled thereto.

LICENSING OF ADJUSTERS

(P. A. 1915, Act No. 136.)

An Act to provide for the licensing of adjusters of companies carrying workmen's compensation insurance and the suspension and revocation of such licenses.

The People of the State of Michigan enact:

§ 1. **Necessity—Fee.**—No person, partnership, association or corporation shall, after this act takes effect, engage in the business of adjusting claims for compensation under act number ten of the Public Acts of nineteen hundred twelve, and acts amendatory thereto, for companies carrying workmen's compensation insurance, without first procuring a certificate of authority to act as such adjuster from the Commissioner of Insurance of this State. The Commissioner of Insurance shall issue such adjuster's certificate of authority only to persons, partnerships, associations or corporations applying therefor, who are trustworthy and competent to transact such business in such manner as to safeguard the interests of the public. Every person, partnership, association or corporation to whom such certificate is issued shall pay to the Commissioner of Insurance as a license fee therefor the sum of two dollars to be paid into the State Treasury of this State as other fees paid to such commissioner.

§ 2. **Suspension and revocation.**—Such license and certificate of authority may be suspended or revoked by the Commissioner of Insurance for fraud or serious misconduct on the part of any such adjuster. Before revoking the license of any adjuster under this act, the commissioner shall give notice in writing to such adjuster of the charges of fraud or misconduct preferred against him, and shall give such adjuster full opportunity to be heard in relation to the same.

§ 3. **Violation of Act—Criminal liability.**—Any person, partnership, association or corporation or their agents or employes violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one hundred dollars, and in default of the payment thereof shall be imprisoned in the county jail for not more than thirty days, or by both such fine and imprisonment in the discretion of the court.

MINNESOTA

WORKMEN'S COMPENSATION ACT

Section

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WORKMEN'S COMPENSATION ACT

(Laws 1913, c. 467, G. S. 1913, c. 84a, § 8195 et seq., p. 1824, as amended and added to by Laws 1915, c. 209, p. 285, and Laws 1915, c. 193, p. 258.)

An Act prescribing the liability of an employer to make compensation by way of damages for injuries due to accident received by an employé arising out of and in the course of employment, modifying common law and statutory remedies, in such cases; establishing an alternative elective schedule of compensation, regulating procedure for the determination of liability and compensation thereunder in certain cases, and prescribing penalties for the violation thereof. [As amended by G. L. 1915, c. 209, § 1.]

Be it enacted by the Legislature of the State of Minnesota:

PART 1.—COMPENSATION BY ACTION AT LAW—MODIFICATION OF REMEDIES

§ 1. Circumstances under which compensation becomes due—Defenses—Willful negligence.—When personal injury or death is caused to an employé by accident arising out of and in the course of his employment, of which injury the actual or lawfully imputed negligence of the employer is the natural and proximate cause, he, or, in case of death, his personal representative, for the exclusive benefit of the surviving spouse and next of kin, shall receive compensation by way of damages therefor from his employer, pro-

vided the employé was himself not wilfully negligent at the time of receiving such injury; and the question of whether the employé was wilfully negligent shall be one of fact to be submitted to the jury, subject to the usual powers of the court over verdicts rendered contrary to the evidence, or to law.

§ 2. **Defenses excluded.**—In all cases brought under part 1 of this act it shall not be a defense (a) that the employé was negligent, unless and except it shall also appear that such negligence was willful; (b) that the injury was caused by the negligence of a fellow employé; (c) that the employé had assumed the risks inherent in, or incidental to the work, or arising out of and in the course of his employment from the failure of the employer to provide and maintain safe premises and suitable appliances, which grounds of defense are hereby abolished except as provided in section 4.

§ 3. **When defenses excluded.**—If the employer elects not to come under part 2 of this act, he loses the right to interpose the three defenses named in section 2 in any action brought against him for personal injury or death of an employé.

§ 4. **When defenses available.**—If the employer becomes subject to part 2 of this act and the employé does not, then the employer may set up such defenses as are available at the time of the passage of this act.

§ 5. **Death claims.**—The provisions of sections 1, 2, 3 and 4 shall apply to any claim for the death of an employé arising under section 4503 of chapter 84, Revised Laws of Minnesota 1905, and the acts or parts of acts amendatory thereof, concerning death by wrongful act.

§ 6. **Burden of proof.**—In all actions at law brought pursuant to part 1 of this act, the burden of proof to establish willful negligence of the injured employé shall be upon the defendant.

§ 7. **Legal services and disbursements, when lien—Medical and hospital services.**—No claim for legal services or disbursements pertaining to any demand made or suit brought under the provisions of this act shall be an enforceable lien against the amount paid as compensation, or be valid or binding in any other respect, unless the same be approved in writing by the judge presiding at the trial, or in case of settlement without trial, by a judge of the district court. Provided, that if notice in writing be given the defendant of such claims for legal services or disbursements, the same shall be a lien against the amount paid as compensation, subject to determination of the amount and approval hereinbefore provided. All sums allowed as liens against such compensation or paid for legal, medical and hospital services and other disbursements, shall be reported by the employé to the labor commissioner with terms of settlement as provided in section 24 of this act.

PART 2.—ELECTIVE COMPENSATION

§ 8 [as amended by G. L. 1915, c. 193]. **Not applicable to certain employments.**—This Act shall not be construed or held to apply to any common carrier by steam railroad, domestic servants, farm laborers or persons whose employment at the time of the injury is casual, and not in the usual course of the trade, business, profession or occupation of his employer.

§ 9. **Agreement to be subject to provisions.**—If both employer and employé, shall, by agreement express or implied, or otherwise, as herein provided, become subject to part 2 of this act, compensation according to the schedules hereinafter contained shall be paid by every such employer, in

every case of personal injury or death of his employé, caused by accident, arising out of and in the course of employment, without regard to the question of negligence, except accidents which are intentionally self-inflicted or when the intoxication of such employé is the natural or proximate cause of the injury, and the burden of proof of such fact shall be upon the employer.

§ 10. Surrender of other rights.—Such agreement or the election hereinafter provided for shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in part 2 of this act, and an acceptance of all the provisions of part 2 of this act, and shall bind the employé himself, and for compensation for his death shall bind his personal representative, the surviving spouse and next of kin, as well as the employer, and those conducting his business during bankruptcy or insolvency, for compensation for death or injury, as provided for by part 2 of this act.

§ 11. Presumption as to acceptance of provisions—Election not to accept—Notices.—All contracts of employment made after the taking effect, of this act shall be presumed to have been made with reference, and subject to the provisions of part 2, unless otherwise expressly stated in the contract, in writing, or unless written or printed notice has been given by either party to the other, as hereinafter provided, that he does not accept the provisions of part 2. Every employer and every employé is presumed to have accepted and come under part 2 hereof, unless thirty (30) days prior to accident, he shall have signified his election not to accept or be bound by the provisions of part 2. This election not to accept part 2 shall be by notice as follows:

The employer shall post and keep posted in his shop or place of business a written or printed notice of his election not to be bound by part 2 hereof and file a duplicate thereof with the labor commissioner.

The employé shall give written or printed notice to the employer of his election not to be bound by part 2, and file a duplicate with proof of service attached thereto with the labor commissioner.

§ 12 [as amended by G. L. 1915, c. 209, § 2]. Either party may terminate agreement.—Either party may terminate his acceptance, or his election not to accept of the provisions of part 2 by thirty (30) days' written notice to the other, such notice to be given as provided in Section 11. A duplicate of such notice with proof of service attached thereto shall be filed with the labor commissioner and the time shall not begin to run until the notice is so filed.

§ 12a [as enacted by G. L. 1915, c. 209, § 3]. Minors.—Minors who are permitted to work by the laws of this state shall, for the purposes of part 2 of this act, have the same power to contract, make election of remedy, make settlements, and receive compensation as adult employés; subject, however, to the power of the court, in its discretion at any time to require the appointment of a guardian to make such settlement and to receive moneys thereunder or under an award.

§ 13 [as amended by G. L. 1915, c. 209, § 4]. Schedule of compensation.—Following is the schedule of compensation: (a) For injury producing temporary total disability, fifty per centum of the wages received at the time of injury, subject to a maximum compensation of eleven dollars (\$11.00) per week and a minimum of six and one-half dollars (\$6.50) per week; provided, that if at the time of injury the employé receives wages of less than six and

one-half dollars (\$6.50) per week, then he shall receive the full amount of such wages per week. This compensation shall be paid during the period of such disability, not, however, beyond three hundred weeks. Payments to be made at the intervals when the wage was payable, as nearly as may be.

(b) In all cases of temporary partial disability the compensation shall be fifty per cent. of the difference between the wage of the workman at the time of the injury, and the wage he is able to earn in his partially disabled condition. This compensation shall be paid during the period of such disability, not, however, beyond three hundred weeks, payment to be made at the intervals when the wage was payable as nearly as may be and subject to the same maximum as stated in clause (a).

(c) For permanent partial disability, the compensation shall be based upon the extent of such disability. In cases included by the following schedule the compensation shall be that named in the schedule, to-wit:

For the loss of a thumb, fifty per centum of daily wages during sixty (60) weeks.

For the loss of a first finger, commonly called index finger, fifty per centum of daily wages during thirty-five (35) weeks.

For the loss of a second finger, fifty per centum of daily wages during thirty (30) weeks.

For the loss of a third finger, fifty per centum of daily wages during twenty (20) weeks.

For the loss of a fourth finger, commonly called little finger, fifty per centum of daily wages during fifteen weeks.

The loss of the first phalange of the thumb, or of any finger, shall be considered equal to the loss of one-half of such thumb, or finger, and compensation shall be paid at the prescribed rate during one-half the time specified above for such thumb or finger.

The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of a great toe, fifty per centum of daily wages during thirty (30) weeks.

For the loss of one of the toes other than a great toe, fifty per centum of daily wages during ten (10) weeks.

The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be paid at the prescribed rate during one-half the time specified above for such toe.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, fifty per centum of daily wages during one hundred and fifty (150) weeks.

For the loss of an arm, fifty per centum of daily wages during two hundred (200) weeks.

For the loss of a foot, fifty per centum of daily wages during one hundred and twenty-five (125) weeks.

For the loss of a leg, fifty per centum of daily wages during one hundred and seventy-five (175) weeks.

For the loss of an eye, fifty per centum of daily wages during one hundred (100) weeks.

For the complete and permanent loss of hearing in both ears, fifty per centum of daily wages during one hundred and fifty-six (156) weeks.

For the loss of an eye and a leg, fifty per centum of daily wages during three hundred and fifty (350) weeks.

For the loss of an eye and an arm, fifty per centum of daily wages during three hundred and fifty (350) weeks.

For the loss of an eye and a hand, fifty per centum of daily wages during three hundred and twenty-five (325) weeks.

For the loss of an eye and a foot, fifty per centum of daily wages during three hundred (300) weeks.

For the loss of two arms other than at the shoulder, fifty per centum of daily wages during four hundred (400) weeks.

For the loss of two hands, fifty per centum of daily wages during four hundred (400) weeks.

For the loss of two legs, fifty per centum of daily wages during four hundred (400) weeks.

For the loss of two feet, fifty per centum of daily wages during four hundred (400) weeks.

For the loss of one arm and the other hand, fifty per centum of the daily wages during four hundred (400) weeks.

For the loss of one hand and one foot, fifty per centum of the daily wages during four hundred (400) weeks.

For the loss of one leg and the other foot, fifty per centum of the daily wages during four hundred (400) weeks.

For the loss of one leg and one hand, fifty per centum of the daily wages during four hundred (400) weeks.

For the loss of one arm and one foot, fifty per centum of the daily wages during four hundred (400) weeks.

For the loss of one arm and one leg, fifty per centum of the daily wages during four hundred (400) weeks.

Where an employé sustains concurrent injuries resulting in concurrent disabilities, he shall receive compensation only for the injury which produces the longest period of disability; but this section shall not affect liability for the concurrent loss of more than one member, for which members compensations are provided in the specific schedule and in subsection (e) below.

In all cases of permanent partial disability, it shall be considered that the permanent loss of the use of a member shall be equivalent to and draw the same compensation as the loss of that member; but the compensation in and by said schedule provided, shall be in lieu of all other compensation in such cases.

In cases of permanent partial disability due to injury to a member, resulting in less than total loss of such member not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss of the respective member, which the extent of injury to the member bears to its total loss.

All compensation provided in clause (c) of this section for loss of members, or loss of use of members are subject to the same limitations as to maximum and minimum as are stated in clause (a).

In all other cases of permanent partial disability not above enumerated the compensation shall be fifty per centum of the difference between the

wage of the workman at the time of the injury and the wage he is able to earn in his partially disabled condition, subject to a maximum of eleven (\$11.00) dollars per week. Compensation shall continue during disability, not, however, beyond three hundred (300) weeks.

(d) For permanent total disability as defined in subsection (e), below, fifty per centum of the wages received at the time of the injury, subject to a maximum compensation of eleven (\$11.00) dollars per week and a minimum compensation of six and one-half (\$6.50) dollars per week; provided, that if at the time of injury the employé was receiving wages of less than six and one-half (\$6.50) dollars per week; then he shall receive the full amount of his wages per week. This compensation shall be paid during such permanent total disability, not exceeding five hundred and fifty (550) weeks; but in all such cases drawing more compensation than six and one-half (\$6.50) dollars per week, the payments after the first four hundred (400) weeks, shall be reduced to six and one-half (\$6.50) dollars per week for the remainder of the five hundred and fifty (550) weeks, while the permanent total disability continues; payment to be made at the intervals when the wage was payable as nearly as may be. The total amount of compensation payable under this subsection shall not exceed five thousand (\$5,000.00) dollars in any case. Provided, however, that in case an employé who is permanently and totally disabled, becomes an inmate of a public institution, then no compensation shall be payable unless he has wholly dependent on him for support a person or persons named in subsections (1), (2), and (3) of Section 14, (whose dependency shall be determined as if the employé were deceased); in which case the compensation provided for in this subsection shall be paid for the benefit of said persons so dependent, during dependency, in the manner ordered by the court, while the employé is an inmate of such institution.

(e) The total and permanent loss of the sight of both eyes, or the loss of both arms at the shoulder, or complete and permanent paralysis, or total and permanent loss of mental faculties shall constitute permanent total disability.

(e) 1. For permanent total disability, other than as defined in subsection (e) fifty per centum of the wages received at the time of injury subject to a maximum compensation of eleven (\$11.00) dollars per week and a minimum compensation of six and one-half (\$6.50) dollars per week; provided, that if at the time of injury the employé was receiving wages of less than six and one-half (\$6.50) dollars per week, then he shall receive the full amount of his wages per week. This compensation shall be paid during the period of such permanent total disability not exceeding four hundred weeks; payments to be made at the intervals when the wage was payable as nearly as may be.

(f) In case a workman sustains an injury due to accident arising out of and in the course of his employment, and during the period of disability caused thereby, death results proximately therefrom, all payments previously made as compensation for such injury shall be deducted from the compensation, if any, due on account of death.

§ 14 [as amended by G. L. 1915, c. 209, § 5]. Who are dependents and allowances to each.—(1) Wife and children conclusively presumed wholly dependent—When—For the purposes of this act the following described persons shall be conclusively presumed to be wholly dependent: (a) Wife, unless it be shown that she was voluntarily living apart from her husband at

the time of his injury or death. (b) Minor children under the age of sixteen years.

(2) *Prima facie* presumption as to certain children—Children between sixteen and eighteen years of age, or those over eighteen, if physically or mentally incapacitated from earning, shall *prima facie* be considered dependent.

(3) Actual dependents—Wife, child, husband, mother, father, grandmother, grandfather, sister, brother, mother-in-law and father-in-law who were wholly supported by the deceased workman at the time of his death and for a reasonable period of time immediately prior thereto shall be considered his actual dependents, and payment of compensation shall be made to them in the order named.

(3A) Partial dependents—Any member of a class named in subdivision (3), who regularly derived part of his support from the wages of the deceased workman at the time of his death and for a reasonable period of time immediately prior thereto shall be considered his partial dependent, and payment of compensation shall be made to such dependents in the order named.

(4) In death cases, compensation payable to dependents shall be computed on the following basis and shall be paid to the persons entitled thereto, without administration.

(5) If the deceased employé leave a widow and no dependent child, there shall be paid to the widow, thirty five per centum of the monthly wages of deceased.

(6) If the deceased employé leave a widow and one dependent child, there shall be paid to the widow for the benefit of herself and such child, forty-five per centum of the monthly wages of deceased.

(7) If the deceased employé leave a widow and either two or three dependent children, there shall be paid to the widow for the benefit of herself and such children, fifty-five per centum of the monthly wages of deceased.

(8) If the deceased employé leave a widow and four or more dependent children, there shall be paid to the widow for the benefit of herself and such children, sixty per centum of the monthly wages of the deceased.

(8A) In all cases where compensation is payable to a widow for the benefit of herself and dependent child or children, the court shall have power to determine in its discretion what portion of the compensation shall be applied for the benefit of any such child or children and may order the same paid to a guardian.

(9) In case of re-marriage of a widow without children, she shall receive a lump sum settlement equal to one-half of the amount of the compensation remaining unpaid. This sum shall be paid to her within sixty (60) days after written notice to the employer of such re-marriage. In case of re-marriage of a widow who has dependent children, the unpaid balance of compensation, which would otherwise become due to her, shall be paid to such children.

(10) If the deceased employé leave a dependent orphan, there shall be paid forty per centum of the monthly wages of deceased, with ten per centum additional for each additional orphan with a maximum of sixty per centum of such wages.

(11) If the deceased employé leave a dependent husband and no dependent child there shall be paid to the husband twenty-five per centum of the monthly wages of deceased.

(12) If the deceased employé leave no widow or child or husband entitled to any payment hereunder, but should leave a parent or parents, either or both of whom are wholly dependent on the deceased, there shall be paid, if only one parent, thirty per centum of the monthly wages of the deceased, and if both parents, forty per centum of the monthly wages of the deceased to such parent or parents.

(13) If the deceased leave no widow or dependent child or husband or parent entitled to any payment hereunder, but leaves a grandparent, brother, sister, mother-in-law or father-in-law wholly dependent on him for support, there shall be paid to such dependent, if but one, twenty-five per centum of the monthly wages of the deceased, or if more than one thirty per centum of the monthly wages of the deceased, divided between or among them share and share alike.

(14) If compensation is being paid under part 2 of this act to any dependent, such compensation shall cease upon the death or marriage of such dependent, unless otherwise provided herein.

(15) Partial dependents—Partial dependents shall be entitled to receive only that proportion of the benefits provided for actual dependents which the average amount of the wages regularly contributed by the deceased to such partial dependent at, and for a reasonable time immediately prior to the jury, bore to the total income of the dependent, during the same time.

(16) In all cases where death results to an employé caused by accident arising out of and in the course of employment, the employer shall pay in addition to the medical and hospital expenses provided for in Section 18, the expense of last sickness and burial, not exceeding in amount one hundred (\$100.00) dollars, except, in cases where an insurer of the deceased or a benefit association is liable therefor, or for a part thereof; in which case the employer shall not be required to pay any part of such expense, for which such insurer or a benefit association is liable unless such non-payment by the employer would diminish the benefits received by the dependents of the deceased from any such insurer or benefit association. In case any dispute arises as to the reasonable value of the services rendered in connection with the last sickness and burial, the same shall be approved by the court before payment, after such reasonable notice to interested parties as the court shall require. If the deceased leave no dependents no compensation shall be payable except as provided by this subsection.

(17) Death compensation—The compensation payable in case of death to persons wholly dependent shall be subject to a maximum compensation of eleven (\$11.00) dollars per week and a minimum of six and one-half (\$6.50) dollars per week; provided that if at the time of injury the employé receives wages of less than six and one-half (\$6.50) dollars per week, then the compensation shall be the full amount of such wages per week. The compensation payable to partial dependents shall be subject to a maximum of eleven (\$11.00) dollars per week and a minimum of six and one-half (\$6.50) dollars per week; provided that if the income loss of the said partial dependents by such death is less than six and one-half (\$6.50) dollars per week, then the dependents shall receive the full amount of their income loss. This compensation shall be paid during dependency not exceeding three hundred (300) weeks, payments to be made at the intervals when the wage was payable as nearly as may be.

(18) In computing and paying compensation to orphans or other children, in all cases, only those under eighteen years of age, or those over eighteen years of age who are physically or mentally incapacitated from earning, shall be included; the former to receive compensation only during the time they are under eighteen, the latter only for the time they are so incapacitated, within the period of three hundred (300) weeks.

(19) Actual dependents shall be entitled to take compensation in the order named in subsection (3) above, until fifty per centum of the monthly wages of the deceased during the time specified in subsection (17) shall have been exhausted; but the total compensation to be paid to all actual dependents of a deceased employé, shall not exceed in the aggregate eleven (\$11.00) dollars per week.

§ 15. Injury increasing disability.—If an employé receive an injury, which, of itself, would only cause permanent partial disability, but which, combined with a previous disability, does in fact cause permanent total disability, the employer shall only be liable for the permanent partial disability caused by the subsequent injury.

§ 16. Liability of joint employers.—In case any employé for whose injury or death compensation is payable under part 2 of this act shall, at the time of the injury, be employed and paid jointly by two or more employers subject to this act, such employers shall contribute the payment of such compensation in the proportion of their several wage liability to such employé. If one or more but not all of such employers should be subject to part 2 of this act, and otherwise subject to liability for compensation hereunder, then the liability of such of them as are so subject, shall be to pay the proportion of the entire compensation which their proportionate wage liability bears to the entire wages of the employé: Provided, however, that nothing in this section shall prevent any arrangement between such employers for a different distribution, as between themselves, of the ultimate burden of such compensation.

§ 17 [as amended by G. L. 1915, c. 209, § 6]. Waiting period.—In cases of temporary total or temporary partial disability no compensation shall be allowed for the first two weeks after injury received, except as provided by section 18, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in section 19.

§ 18 [as amended by G. L. 1915, c. 209, § 7]. Medical, surgical and hospital service.—Such medical and surgical treatment, medicine, medical and surgical supplies, crutches and apparatus as may be reasonably required at the time of the injury and thereafter during the disability, but not exceeding ninety (90) days, to cure and relieve from the effects of the injury, the same to be provided by the employer and in case of his inability or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employé in providing the same; provided, however, that the total liability under this section shall not exceed the sum of one hundred (\$100.00) dollars in value; except that the court, may upon necessity being shown therefor at any time within one hundred (100) days after the date of the injury, require the employer to furnish such additional medical, surgical and hospital treatment and supplies during said period of ninety (90) days, as may be reasonable, which together with any

such sums or relief theretofore furnished, shall not exceed in all two hundred dollars (\$200.00) in value.

The pecuniary liability of the employer for the medical, surgical, and hospital service herein required and the liability of the employé for any amount in excess thereof shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured persons, and in all cases of dispute as to the value of the medical or hospital service rendered an injured employé, either party may require that the same, before payment, shall be approved by the court, after such reasonable notice to interested parties as the court shall require.

§ 19. **Notice to employer of accident.**—Unless the employer shall have actual knowledge of the occurrence of the injury, or unless the injured workman, or a dependent, or same one in behalf of either, shall give notice thereof to the employer in writing, within fourteen (14) days after the occurrence of the injury, then no compensation shall be due until such notice is given or knowledge obtained. If the notice is given, or the knowledge obtained within thirty (30) days from the occurrence of the injury, no want, failure, or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced by such want, defect or inaccuracy, and then only to the extent of such prejudice. If the notice is given, or the knowledge obtained within ninety (90) days, and if the employé, or other beneficiary, shall show that his failure to give prior notice was due to his mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation or deceit of the employer or his agent, then compensation may be allowed, unless the employer shall show that he was prejudiced by failure to receive such notice, in which case the amount of compensation shall be reduced by such sum as shall fairly represent the prejudice shown. Unless knowledge be obtained or notice given, within ninety (90) days after the occurrence of the injury, no compensation shall be allowed.

§ 20. **Service and requisites of notice.**—The notice referred to in section 19 may be served personally upon the employer, or upon any agent of the employer upon whom a summons may be served in a civil action, or by sending it by registered mail to the employer at the last known residence or business place thereof within the state, and shall be substantially in the following form:

Notice.

You are hereby notified that an injury was received by (name) who was in your employ at (place) while engaged as (kind of work) on or about the _____ day of _____, 19____, and who is now located at (give town, street and number) that so far as now known, the nature of the injury was _____ and that compensation may be claimed therefor.

(Signed) _____
(Giving address)

Dated _____, 19____.

But no variation from this form shall be material if the notice is sufficient to advise the employer that a certain employé, by name, received a specified injury in the course of his employment on or about a specified time, at or near a certain place specified.

§ 20a [as enacted by G. L. 1915, c. 209, § 8]. **Limitation.**—The time within which the following acts shall be performed under part 2 of this act shall be limited to the following periods respectively:

(1) Actions or proceedings by an injured employé to determine or recover compensation; one (1) year after the occurrence of the injury.

(2) Actions or proceedings by dependents to determine or recover compensation; one year after the date of notice in writing given by the employer to the Department of Labor of the State, stating his willingness to pay compensation when it is shown that the death is one for which compensation is payable. In case the deceased was a native of a foreign country, and leaves no known dependent or dependents within the United States, it shall be the duty of the Department of Labor to give written notice of said death to the consul or other representative of said foreign country forthwith.

(3) Proceedings to obtain judgment in case of default of employer for thirty (30) days to pay any compensation due under any settlement or determination; one (1) year after such default.

(4) In case of physical or mental incapacity, other than minority, of the injured person or his dependents to perform or cause to be performed any act required within the time in this section specified, the period of limitation in any such case shall be extended for one year from the date when such incapacity ceases.

§ 21 [as amended by G. L. 1915, c. 209, § 9]. **Examination and verification of injury.**—The injured employé must submit himself to examination by employer's physician, if requested by the employer, and at reasonable times thereafter upon employer's request. The employé shall be entitled upon request to have his own physician present at any such examination. Each party shall defray the cost of his own physician.

(2) Medical examination by neutral physician—In case of dispute as to the injury, the court may, of its own motion, or upon request of any interested party, appoint a neutral physician of good standing and ability to make an examination of the injured person, and report his findings to the court. The expense of such examination shall be borne by the said parties.

(3) If the injured employé refuses to comply with any reasonable request for examination, his right to compensation shall be suspended and no compensation shall be paid while he continues in such refusal.

(4) Autopsy—In all death claims where the cause of death is obscure or disputed, any interested party may require an autopsy; the cost of such autopsy shall be borne by the party demanding the same.

(5) Any physician whose services are furnished or paid for by the employer who treats, or who makes or is present at any examination, of an injured employé, may be required to testify as to any knowledge acquired by him in the course of such treatment or examination, relative to the injury or the disability resulting therefrom.

§ 22 [as amended by G. L. 1915, c. 209, § 10.] **Settlement and payment of compensation.**—(1) The interested parties shall have the right to settle all matters of compensation between themselves. But all settlements shall be substantially in accordance with the provisions of Sections 13 and 14 of this act, and shall be approved by a judge of the district court. When so approved such settlements shall be filed with the clerk of the district court and in case of default by the employer in the payment of any com-

pensation determined or agreed upon and the continuation of such default for the period of thirty (30) days after payment is due and payable, the employé may upon five (5) days' notice in writing to the employer of his intention to apply to the court for judgment cause judgment to be entered on such settlement or determination for all compensation due and payable and unpaid; and such judgment shall have the same force and effect, and may be satisfied as other judgments of the same court. There shall be but one fee of twenty-five cents (25c) charged by said clerk for services in each case under this subsection, and said fee shall cover all services performed by him.

(2) In case of a dispute over, or failure to agree upon a claim for compensation between employer and employé, or the dependents of the employé, either party may submit the claim, both as to questions of fact, the nature and effect of the injuries, and the amount of compensation therefor according to the schedule herein provided, to the judge of the district court of the county which would have jurisdiction in a civil case, or, where there is more than one judge of said court, then to either or any of said judges of such court; which judge is hereby authorized to hear and determine such disputes in a summary manner, and his decision as to all questions of fact shall be conclusive and binding, subject to the right of appeal as hereinafter provided.

§ 23 [as amended by G. L. 1915, c. 209, § 11]. **Alien dependents.**—In case a deceased employé, for whose injury or death compensation is payable, leaves surviving him an alien dependent or dependents residing outside of the United States, the said judge shall direct payment of all compensation due to the deceased or to his dependents to be made to the duly accredited consular officer of the country of which the beneficiaries are citizens, if such consular officer reside within the state of Minnesota, or if not, to his designated representative residing within the state, and such consular officer or his representative shall be the sole representative of such deceased employé and of such dependents to settle all claims for compensation and to receive for distribution to the persons entitled thereto, all compensation arising hereunder. The distribution of said funds to be made only on order of the district court. Such consular officer or his representative shall furnish, if required by the district court, a good and sufficient bond, satisfactory to the court, conditioned upon the proper application of the moneys received by him. Before such bond is discharged, such consular officer or representative shall file with the court, a verified account of the items of his receipts and disbursements of such compensation.

Such consular officer or his representative shall before receiving the first payment of such compensation, and at reasonable times thereafter upon request of the employer, furnish to the employer a sworn statement containing a list of the dependents with the name, age, residence, extent of dependency, and relationship to the deceased of each dependent.

§ 24. **Record of settlements.**—Copies of all settlements and releases shall be filed by the employer with the labor commissioner within ten (10) days after such settlements are made, and shall become part of the permanent records of that department.

§ 24a [as amended by G. L. 1915, c. 209, § 12]. **Commissioner to assist in adjusting differences.**—The commissioner of labor, and the officers and employés of the department of labor and industries upon demand of an employer, or an employé or his dependent shall advise such party or parties

of his or their rights under this act and shall assist so far as possible in adjusting differences between the employé or his dependent and the employer under part 2 hereof, and are hereby empowered to appear in person before the court in any proceeding under part 2 of this act as the representative or adviser of any such party; and in any such case such party shall not be required to be also represented by an attorney at law. The commissioner of labor shall observe in detail the operation of the act throughout the state and shall make report thereof to each session of the legislature, together with such suggestions and recommendations as to changes as he may deem necessary or advisable for the improvement thereof.

§ 25 [as amended by G. L. 1915, c. 209, § 13]. Payment in lump sum.—The amounts of compensation payable periodically hereunder, either by agreement of the parties, so approved by the court, or by decision of the court, may be commuted to one or more lump sum payments, except compensation due for death or permanent total disability, or for permanent partial disability resulting from total loss of hearing or from the loss of an arm or a hand or a foot or a leg or an eye or of more than one such member. These may be commuted only with the consent of the district court.

In making such commutations the lump sum payments shall, in the aggregate, amount to a sum equal to the present value of all future installments of compensation calculated on a six per cent basis.

§ 26. Settlements to be final.—Exceptions—All settlements of compensation by agreement of the parties, and all awards of compensation made by the court, where the amount paid or to be paid in settlement or by award, does not exceed the compensation for six months' disability, shall be final and not subject to readjustment.

§ 27. When compensation payable periodically may be modified.—All amounts paid by employer and received by the employé or his dependents, by lump sum payment, shall be final; but the amount of any award payable periodically for more than six (6) months may be modified as follows:

(a) At any time by agreement of the parties and approved by the court.

(b) If the parties cannot agree, then at any time after six (6) months from the date of the award an application may be made to the court by either party on the ground of increase or decrease of incapacity due solely to the injury. In such case the same procedure shall be followed as in section 30 in case of disputed claim for compensation.

§ 28. Employer may pay award to trustee and be discharged.—At any time after the amount of any award has been agreed upon by the parties, or found and ordered by the court, a sum equal to the present value of all future instalments of compensation calculated on a six per cent basis, may (where death or the nature of the injury renders the amount of future payments certain) by leave of court, be paid by the employer to any savings bank or trust company of this state to be approved and designated by the court, and such sum, together with all interest thereon, shall, thereafter be held in trust for the employé or the dependents of the employé, who shall have no further recourse against the employer. The payment of such sum by the employer, evidenced by the receipts in duplicate of the trustee, one of which shall be filed with the labor commissioner, and the other filed with the clerk of the district court, shall operate as a satisfaction of said award as to the employer. Payments from said fund shall be made by the trustee

in the same amounts and at the same time as are herein required of the employer until said fund and interest shall be exhausted. In the appointment of the trustee, preference shall be given, in the discretion of the court, to the choice of the injured employé or the dependents of the deceased employé, as the case may be.

§ 29. Preference of right to compensation.—The right to compensation and all compensation awarded any injured employé or for death claims to his dependents, shall have the same preference against the assets of the employer as other unpaid wages for labor; but such compensation shall not become a lien on the property of third persons by reason of such preference.

Claims for compensation owned by an injured employé or his dependents, shall not be assignable and shall be exempt from seizure or sale for the payment of any debt or liability.

§ 30 [as amended by G. L. 1915, c. 209, § 14]. Procedure in case of dispute.—Procedure in case of dispute shall be as follows: Either party may present a verified complaint to said judge setting forth the names and residences of the parties and the facts relating to employment at the time of injury, the injury in its extent and character, the amount of wages being received at the time of injury, the knowledge of the employer or notice of the occurrence of said injury, and such other facts as may be necessary and proper for the information of the said judge, and shall state the matter or matters in dispute and the contention of the petitioner with reference thereto.

Upon the presentation of such complaint, it shall be filed with the clerk of the district court of the proper county, and the judge shall fix by order a time and place for the hearing thereof, not less than three (3) weeks after the date of the filing of said complaint. A copy of said complaint and order shall be served as summons in a civil action upon the adverse party within four (4) days after filing the complaint. Within seven (7) days after the service of such complaint, the adverse party may file and serve a verified answer to said complaint, which shall admit or deny the substantial averments of the complaints, and shall state the contention of the defendant with reference to the matter in dispute as disclosed by the complaint. Within five (5) days after the service of the answer the complainant may file and serve a verified reply admitting or denying the matters set forth in the answer.

At the time fixed for hearing, or any adjournment thereof the said judge shall hear such witnesses as may be presented by each party, and in a summary manner decide the merits of the controversy. This determination shall be filed in writing with the clerk of the said court, and judgment shall be entered thereon in the same manner as in causes tried in the said district court, and shall contain a statement of facts as determined by said judge. Subsequent proceedings thereon shall only be for the recovery of moneys thereby determined to be due, provided that nothing herein contained shall be construed as limiting the jurisdiction of the supreme court to review questions of law by certiorari. Costs may be awarded by said judge in his discretion, and when so awarded the same costs shall be allowed, taxed and collected for like services and proceedings in civil cases, provided, that if it shall appear that the employer, prior to the commencement of the action, made to the person or persons entitled thereto a written offer of compensa-

tion in specific terms, which terms were in accordance with the provisions of this act, then no costs shall be awarded or taxed against such employer. Whenever any decision or order is made and filed by the judge upon any matter arising under part 2 of this act, the clerk of the court shall forthwith make and forward to the commissioner of labor a certified copy of such decision or order with any memorandum of the judge and of any judgment entered. No fee or other charge shall be collected therefor.

§ 31. Rights of action preserved.—Every right of action for death, by wrongful act or for injury by negligence, accruing to an injured employé prior to the taking effect of this act is continued and preserved under the existing law.

§ 31a [as amended by G. L. 1915, c. 209, § 15]. Employer given right to insure risks—Conditions.—Any employer who is responsible for compensation as provided under part 2 of this act may insure the risk in any manner then authorized by law. But those writing such insurance shall in every case be subject to the conditions in this section hereinafter named.

If the risk of the employer is carried by any insurer doing business for profit, or by any insurance association or corporation formed of employers, or of employers and workmen, to insure the risks under part 2 of this act, operating by the mutual assessment or other plan or otherwise, then in so far as policies are issued on such risks they shall provide for compensation for injuries or death according to the full benefits of part 2 of this act. But nothing herein contained shall prevent an employer from insuring only a particular class or classes of employés or of risks.

Such policies shall contain a clause to the effect that as between the workman and the insurer, that notice to and knowledge by the employer of the occurrence of the injury shall be deemed notice and knowledge on the part of the insurer; that jurisdiction of the employer for arbitration or other purposes shall be jurisdiction of the insurer, and that the insurer will in all things be bound by and subject to the awards rendered against such employer upon the risks so insured.

Such policies must provide that the workman shall have an equitable lien upon any amount which shall become owing on account of such policy to the employer from the insurer, and in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the workman or dependents, the said insurer will pay the same direct to said workmen or dependents, thereby discharging all obligations under the policy to the employer and all of the obligations of the employer and insurer to the workman; but such policies shall contain no provisions relieving the insurance company from payment when the employer becomes insolvent or discharged in bankruptcy or otherwise, during the period the policy is in force, if the compensation remains owing.

The insurer must be one authorized by law to conduct such business in the state of Minnesota, and authority is hereby granted to all insurance companies writing such insurance to include in their policies in addition to the requirements now provided by law, the additional requirements, terms and conditions in this section provided.

No agreement by an employé to pay to an employer any portion of the cost of insuring his risk under this act shall be valid. But it shall be lawful for the employer and the workman to agree to carry the risks covered by

part 2 of this act in conjunction with other and greater risks and providing other and greater benefits such as additional compensation, accident, sickness or old age insurance or benefits, and the fact that such plan involves a contribution by the workman shall not prevent its validity if such plan has been approved in writing by the commissioner of labor. Any employer who shall make any charge or deduction prohibited by this section shall be guilty of a misdemeanor.

If the employer shall insure to his employes the payment of the compensation provided by part 2 of this act, in a corporation or association authorized to do business in the state of Minnesota and approved by the insurance commissioner of the state of Minnesota, and if the employer shall post a notice or notices in a conspicuous place or in conspicuous places about his place of employment, stating that he is so insured and stating by whom insured, and if the employer shall further file copy of such notice with the labor commissioner of the state of Minnesota, then, and in such case, any suits or actions brought by an injured employe or his dependents shall be brought directly against the insurer, and the employer or insured shall be released from any further liability.

Provided that in case of insolvency or bankruptcy of such insurance company the employer shall not be released from liability under the provisions of this act.

The return of any execution upon any judgment of an employe against any such insurance company unsatisfied in whole or in part, shall be conclusive evidence of the insolvency of such insurance company, and in case of the adjudication of bankruptcy or insolvency of any such insurance company by any court of competent jurisdiction, proceedings may be brought by the employe against the employer in the first instance or against such employer and insurance company jointly or severally or in any pending proceeding against any insurance company, the employer may be joined at any time after such adjudication.

§ 32. Third persons' rights and liabilities.—(1) Any person who creates or carries into operation any fraudulent scheme, artifice or device to enable him to execute work without himself being responsible to the workman for the provisions of this act, shall himself be included in the term "employer," and be subject to all the liabilities of employers under this act. But this section shall not be construed to cover or mean an owner who lets a contract to a contractor in good faith, nor a contractor who, in good faith, lets to a subcontractor a portion of his contract. Provided, however, that no person shall be deemed a contractor or subcontractor, so as to make him liable to pay compensation within the meaning of this section, who performs his work upon the employers' premises and with the employers' tools or appliances and under the employers' direction: nor one who does what is commonly known as "piece work," or in any way where the system of employment used merely provides a method of fixing the workman's wages.

(2) Where compensation is claimed from, or proceedings taken against a person under subdivision 1 of this section, the compensation shall be calculated with reference to the wage the workman was receiving from the person by whom he was immediately employed at the time of the injury.

(3) The employer shall not be liable or required to pay compensation for injuries due to the acts or omissions of third persons not at the time in

the service of the employer, nor engaged in the work in which the injury occurs, except as provided in section 33 or under the conditions set forth in section 34 (1).

§ 33. Liability of party other than employer—Procedure.—(1) Third party under part 2. That where an injury or death for which compensation is payable under part 2 of this act is caused under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party also being subject to the provisions of part 2 of this act, the employé in case of injury or his dependents in case of death, may, at his or their option, proceed either at law against such party to recover damages, or against the employer for compensation under part 2 of this act, but not against both.

If the employé in case of injury, or his dependents in case of death, shall bring an action for the recovery of damages against such party other than the employer, the amount thereof, manner in which and the persons to whom the same are payable, shall be as provided for in part 2 of this act and not otherwise: provided that in no case shall such party be liable to any person other than the employé or his dependents for any damages growing out of or resulting from such injury or death.

If the employé or his dependents shall elect to receive compensation from the employer, then the latter shall be subrogated to the right of the employé or his dependents to recover against such other party, and may bring legal proceedings against such party and recover the aggregate amount of compensation payable by him to such employé, or his dependents hereunder, together with the costs and disbursements of such action and reasonable attorney's fees expended by him therein.

(2) Third party not under part 2—That where the injury or death for which compensation is payable under part 2 of this act was caused under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party not being subject to the provisions of part 2 of this act, legal proceedings may be taken by the employé or dependents against such other party to recover damages, notwithstanding the payment by the employer, or his liability to pay compensation hereunder. But in such case, if the action against such other party is brought by the injured employé or in case of his death by his dependents, and judgment is obtained and paid, or settlement is made with such other party, either with or without suit, the employer shall be entitled to deduct from the compensation payable by him, the amount actually received by such employé or dependents; provided that if the injured employé or in case of his death his dependents shall agree to receive compensation from the employer or shall institute proceedings to recover the same, or accept from the employer any payment on account of such compensation, such employer shall be subrogated to all the rights of such employé or dependents and may maintain, or in case an action has already been instituted, may continue the action either in the name of the employé or dependents, or in his own name against such other party for the recovery of damages, but such employer shall nevertheless pay over to the injured employé or dependents all sums collected from such other party by judgment or otherwise in excess of the amount of such compensation payable by the employer under part 2 of this act, and costs, attorney's fees, and reasonable expenses incurred by

such employer in making such collection or enforcing such liability; provided that in no case shall such party be liable to any person other than the employé or his dependents for any damages growing out of or resulting from such injury or death.

§ 34 [as amended by G. L. 1915, c. 209, §§ 16, 17]. Words and phrases defined.—Throughout this act the following words and phrases as used therein shall be considered to have the following meaning respectively, unless the context shall clearly indicate a different meaning in the connection used.

(a) The word "compensation" has been used both in part 1 and part 2 of this act to indicate the money benefits to be paid on account of injury or death. Strictly speaking, the benefit which an employé may receive by action at law under part 1 of this act is damages, and this is indicated in section 1. To avoid confusion, the word "compensation" has been used in both parts of the act, but it should be understood that under part 1 the compensation by way of damages is determined by an action at law.

(b) "Child" or "children" shall include posthumous children and all other children entitled by law to inherit as children of the deceased, also step-children who were members of the family of the deceased at the time of his injury and dependent upon him for support.

(c) A dependent child or orphan shall be considered to mean an unmarried child under the age of eighteen years or one over that age, who is physically or mentally incapacitated from earning.

(d) The term "employer" as used herein shall mean every person not excluded by section 8, who employs another to perform a service for hire, and to whom the "employer" directly pays wages, and shall include any person or corporation, copartnership, or association or group thereof, and shall include county, village, town, city, school district and other public employers, except the state.

(e) The term "physician" shall include "surgeon," and in either case shall mean one authorized by law to practice his profession within one of the United States and in good standing in his profession at the time.

(f) The term "workman" shall include the plural and all ages and both sexes.

(g) The terms "employé" and "workman" are used interchangeably and have the same meaning throughout this act, and shall be construed to mean:

(1) Every person in the service of a county, city, town, village or school district therein, under any appointment or contract of hire, express or implied, oral or written; but shall not include any official of any county, city, town, village or school district therein, who shall have been elected or appointed for a regular term of office, or to complete the unexpired portion of any regular term.

(2) Every person, not excluded by Section 8, in the service of another under any contract of hire, express or implied, oral or written, including aliens and also including minors who are legally permitted to work under the laws of the state.

(h) The word "accident" as used in the phrases "personal injuries due to accident" or "injuries or death caused by accident" in this act shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen event, happening suddenly and violently, with

or without human fault and producing at the time, injury to the physical structure of the body.

(i) Personal injuries, etc.—Without otherwise affecting either the meaning or interpretation of the abridged clause, "personal injuries arising out of and in the course of employment," it is hereby declared:

Not to cover workmen except while engaged in, on, or about the premises where their services are being performed, or where their service requires their presence as a part of such service at the time of the injury, and during the hours of service as such workmen, and shall not include an injury caused by the act of a third person or fellow employé intended to injure the employé because of reasons personal to him, and not directed against him as an employé, or because of his employment.

(j) Wherever in this act the singular is used, the plural shall be included; where the masculine gender is used, the feminine and neuter shall be included.

(k) Amputations—Amputations between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot.

(l) The labor commissioner, referred to in this act, shall denote the commissioner of labor of the state of Minnesota.

(m) "The court" as used herein shall mean the district court which would have jurisdiction in an ordinary civil case involving a claim for the injuries or death in question, and "the judge" shall mean a judge of said court.

(n) As to constitutionality—In case for any reason any paragraph or any provision of this act shall be questioned in any court of last resort and shall be held by such court to be unconstitutional or invalid, the same shall not be held to affect any other paragraph or provision of this act, except that parts 1 and 2 are hereby declared to be inseparable, and if either part be declared void or inoperative in an essential part, so that the whole of such part must fall, the other part shall fall with it and not stand alone. Part 1 of this act shall not apply in cases where part 2 becomes operative in accordance with the provisions thereof, but shall apply in all other cases, and in such cases shall be in extension or modification of the common law.

§ 35. **Repealing clause.**—All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 36. **When effective.**—This act shall take effect from and after the first day of October, A. D. 1913.

MONTANA

WORKMEN'S COMPENSATION ACT

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WORKMEN'S COMPENSATION ACT

(Laws 1915, c. 96.)

An Act providing for the protection and safety of workmen in all places of employment and for the inspection and regulation of places of employment in all inherently hazardous works and occupations; providing a schedule of compensation for injury to or death of workmen and methods of paying the same, and prescribing the liability of employers who do not elect to pay such compensation; establishing the industrial accident board, defining its powers and duties; and providing for a review of its awards.

Be it enacted by the Legislative Assembly of the State of Montana:

PART I.—GENERAL PROVISIONS

§ 1. (a) **Name of Act.**—This Act shall be known and may be cited as the Workmen's Compensation Act. Part I shall contain those sections which have a general application to the whole of the Act and may be referred to as the "General Provisions;" Part II shall contain those sections which refer to Compensation Plan Number One; Part III shall contain those sections which refer to Compensation Plan Number Two; Part IV shall contain those sections which refer to Compensation Plan Number Three; Part V shall contain those sections which may be referred to as the "Safety Provisions."

§ 1. (b) **"Compensation plan."**—Whenever Compensation Plan Number One, Two or Three, or the safety provisions of this Act shall be referred to, such reference shall also be held to include all other sections which are applicable to the subject matter of such reference.

§ 1. (c) **"Compensation provisions."**—The "Compensation Provisions" of this Act, whenever referred to, shall be held to include the provisions of Compensation Plans Number One, Two, or Three, and all other sections of this Act applicable to the same, or any part thereof.

§ 2. (a) **Industrial Accident Board created.**—There is hereby created a Board to consist of three members; the Commissioner of Labor and Industry shall be one member, the State Auditor shall be one member, and one member shall be appointed by the Governor, which board shall be known as the Industrial Accident Board, and shall have the powers, duties, and functions hereinafter conferred. The term of office of the appointed member of the board shall be for four years and until his successor shall have been appointed and qualified. He shall receive an annual salary of Four Thousand Dollars, payable monthly, and shall be the Chairman of the Board. The Board shall elect one of their number as Treasurer of the Board.

§ 2. (b) **Vacancies.**—A vacancy in the office of the appointed member of the Board shall be filled in the same manner as the original appointment, but shall only be for the unexpired term of such vacancy. The appointed member shall not be removed except for cause, and after a hearing had before and a finding made by the remaining members of the Board, and both of the remaining members of the board must concur in the removal of the appointed member.

§ 2. (c) **Bond of members.**—Each member shall, upon entering upon the duties of his office, execute to the State of Montana and file with the Secre-

tary of State a bond in the sum herein prescribed, executed by not less than four responsible sureties or by some surety company authorized to become sole surety on bonds in the State of Montana, such bonds to be approved by the Governor, and conditioned that he will faithfully and impartially discharge the duties of his office. Such bonds shall be in addition to any other bonds required by law to be furnished.

§ 2. (d) **Bond of treasurer.**—The bond of the Treasurer of the Board shall be in a sum to be fixed by the Governor, not less than Twenty-five Thousand Dollars, (\$25,000.00), nor more than One Hundred Thousand Dollars, (\$100,000.00). The bonds of the members of the Board other than the Treasurer shall be in the sum of Ten Thousand Dollars (\$10,000.00).

§ 2. (e) **No additional compensation to existing officers.**—Neither the Commissioner of Labor and Industry, nor the State Auditor, shall receive any additional compensation for the duties imposed upon them by this Act.

§ 2. (f) **Quorum—Finding of commissioner.**—A majority of the Board shall constitute a quorum for the transaction of any business. A vacancy on the Board shall not impair the right of the remaining members to perform all of the duties and exercise all the powers and authority of the Board. The act of the majority of the Board when in session as a Board shall be deemed to be the act of the Board, but any investigation, inquiry, or hearing which the Board has power to undertake or to hold, may be undertaken or held by, or before, any member thereof, or any examiner, or referee appointed by the Board for that purpose. Every finding, order, decision, or award made by any commissioner, examiner, or referee pursuant to such investigation, inquiry or hearing, when approved and confirmed by the Board and ordered filed in its office shall be deemed to be the finding, order, decision, or award of the Board.

§ 2. (g) **Seal.**—The Board shall have a seal bearing the following inscription: "Industrial Accident Board, State of Montana, Seal." The seal shall be affixed to all writs and authentications of copies of records, and to such other instruments as the Board shall direct. All courts shall take judicial notice of said seal.

§ 2. (h) **Office.**—The Board shall keep its principal office in the capital of the state and shall be provided with suitable rooms, necessary office furniture, stationery, and other supplies. For the purpose of holding sessions in other places the Board shall have power to rent temporary quarters.

§ 2. (i) **Secretary.**—The Board shall appoint a secretary who shall hold office at the pleasure of the Board. It shall be the duty of the secretary to keep a full and true record of all the proceedings of the Board; to issue all necessary processes, writs, warrants, and notices which the Board is required or authorized to issue, and generally to perform such other duties as the Board may prescribe.

§ 2. (j) **Assistants and employés.**—The Board shall employ such assistants and other employees as it may deem necessary to carry out the provisions of this Act.

§ 2. (k) **Same—Compensation.**—All officers and employees of the Board shall receive such compensation for their services as may be fixed by the Board, shall hold office at the pleasure of the Board, shall perform such duties as are imposed on them by law or by the Board.

§ 2. (l) Payment of salaries.—The salaries of members of the Board, secretary and every other person holding office or employment under the Board, as fixed by law or by the Board, shall be paid monthly after being approved by the Board upon claims therefor to be audited and approved by the State Board of Examiners.

§ 2. (m) Expenses of Board.—All expenses incurred by the Board pursuant to the provisions of this Act, including the actual and necessary traveling and other expenses and disbursements of the members thereof, its officers and employees incurred while on business of the Board, either within or without the State, shall, unless otherwise provided in this Act, be paid from the Industrial Administration Fund, after being approved by the Board upon claims therefor to be audited and approved by the State Board of Examiners.

§ 2. (n) Blank forms.—The Board shall cause to be printed such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this Act. It shall provide a book in which shall be entered the minutes of all its proceedings, a book of record in which shall be recorded all awards made by the Board, and such other books, or records as it shall deem requisite for the purpose and efficient administration of this Act. All such records are to be kept in the office of the Board.

§ 2. (o) Publication of reports and bulletins.—The Board shall have the power and authority to publish and distribute at its discretion from time to time, in addition to its annual report, such further reports, and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable.

§ 2. (p) Fees.—The Board shall have power and authority to charge and collect the following fees:

1. For copies of papers and records not required to be certified or otherwise authenticated by the Board, 15 cents for each folio; for certified copies of official documents and orders filed in its office, or of the evidence taken at any hearing, 20 cents for each folio.

2. To fix and collect reasonable charges for publications issued under its authority.

3. The fees charged and collected under this section shall be paid monthly into the treasury of the State to the credit of the Industrial Administration Fund, and shall be accompanied by a detailed statement thereof.

§ 2. (q) Legal adviser.—The Attorney General shall be the legal adviser of the Board and shall represent it in all proceedings whenever so requested by the Board or any member thereof.

§ 3. (a) Abolition of defenses.—In an action to recover damages for personal injuries sustained by an employé in the course of his employment, or for death resulting from personal injuries so sustained, it shall not be a defense: (1) That the employé was negligent, unless such negligence was willful; (2) That the injury was caused by the negligence of a fellow employé; (3) That the employé had assumed the risks inherent in, incident to, or arising out of his employment, or arising from the failure of the employer to provide and maintain a reasonably safe place to work, or reasonably safe tools, or appliances.

§ 3. (b) Employés excluded.—The provisions of Section 3 (a) shall not apply to actions to recover damages for personal injuries sustained by house-

hold or domestic servants, farm or other laborers engaged in agricultural pursuits, or persons whose employment is of a casual nature.

§ 3. (c) **Exclusive remedy.**—Any employer who elects to pay compensation as provided in this Act shall not be subject to the provisions of Section 3 (a), nor shall such employer be subject to any other liability whatsoever for the death of or personal injury to any employé except as in this Act provided; and, except as specifically provided in this Act, all causes of action, actions at law, suits in equity, and proceedings whatever, and all statutory and common law rights and remedies for, and on account of such death of, or personal injury to, any such employé are hereby abolished; provided, that Section 3 (a) shall not apply to actions brought by an employé who has elected not to come under this Act, or by his representatives, for damages for personal injuries, or death, against an employer who has elected to come under this Act.

§ 3. (d) **Same.**—Where both the employer and employé have elected to come under this Act, the provisions of this Act shall be exclusive, and such election shall be held to be a surrender by such employer and such employé of their right to any other method, form, or kind of compensation, or determination thereof, or to any other compensation, or kind of determination thereof, or cause of action, action at law, suits in equity, or statutory or common law, right, or remedy, or proceeding whatever, for, or on account of, any personal injury to, or death of such employé, except as such rights may be hereinafter specifically granted; and such election shall bind the employé himself and in case of death shall bind his personal representative and all persons having any right or claim to compensation for his injury or death, as well as the employer, and those conducting his business during liquidation, bankruptcy, or insolvency.

§ 3. (e) **Liability of public corporation.**—Where a public corporation is the employer, or any contractor engaged in the performance of contract work for such public corporation, the terms, conditions and provisions of Compensation Plan Number Three shall be exclusive, compulsory, and obligatory upon both employer and employé. Any sums necessary to be paid under the provisions of this Act by any public corporation shall be considered to be ordinary and necessary expenses of such corporation, and the governing body of such public corporation shall make appropriation of and pay such sums into the accident or administration fund, as the case may be, at the time and in the manner provided for in this Act, notwithstanding that such governing body may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriation, ordinance, or otherwise.

§ 3. (f) **Election of employer.**—Every employer engaged in the industries, works, occupations, or employments in this Act specified as "hazardous" may on or before the 1st day of July, 1915, if such employer be then engaged in such hazardous industry, work, occupation, or employment, or at any time thereafter, or, if such employer be not so engaged on said date, may on or after thirty days before entering upon such hazardous work, occupation or employment, or at any time thereafter, elect whether he will be bound by either of the Compensation Plans mentioned in this Act. Such election shall be in the form prescribed by the Board, and shall state whether such employer shall be bound by Compensation Plan Number One or Compensation Plan Number Two, or Compensation Plan Number Three, and a

notice of such election, with the nature thereof, shall be posted in a conspicuous place in the place of business of such employer, and a copy of such notice, together with an affidavit of such posting, shall be filed with the Board.

§ 3. (g) Election of employé presumed.—Notice.—Every employé in the industries, works, occupations or employments in this Act specified as "Hazardous" shall become subject to and be bound by the provisions of that plan of compensation which shall have been adopted by his employer, unless such employé shall elect not to be bound by any of the compensation provisions of this Act and until such employé shall have made such election. Such election shall be made by written notice in the form prescribed by the Board, served upon the employer, and a copy filed with the Board, together with the proof of such service.

§ 3. (h) Presumption of election.—If the employer shall fail to make the election herein provided for at the time, and in the manner herein prescribed, such employer shall be presumed to have elected not to be bound by the provisions of either Compensation Plan Number One, or Compensation Plan Number Two, or Compensation Plan Number Three for that fiscal year, unless such employer shall elect to become subject to, or bound by this act in the manner provided for such election in the first instance. After having once elected to be bound by one or the other of the Compensation Plans provided in this Act, such employer shall be bound by such election for said first fiscal year and each succeeding fiscal year, unless such employer shall, not less than thirty or more than sixty days prior to the end of any fiscal year, elect not to be bound by either of such Compensation Plans, after the expiration of said fiscal year or unless he shall elect to be bound for the succeeding fiscal year by a different Compensation Plan than the one by which he is then governed. Such election must be made in the manner provided for in reference to the first election of such employer under this Act.

§ 3. (i) Election of compensation plan.—It is the intention of this Act that any employer engaged in hazardous occupations as defined herein shall, before being bound by either of the Compensation Plans herein provided, elect to be so bound thereby, and that the employé shall be presumed to have elected to be the subject to, and bound by the provisions of the particular plan which may have been adopted by his employer, unless such employé shall affirmatively elect not to be bound by this Act.

§ 3. (j) Revocation of election.—Any employé who has elected not to be bound by the provisions of this Act in the manner herein provided, may revoke such election and elect to come thereunder at any time. Any employer who has failed to elect to be bound by either one or the other of the Compensation Plans herein mentioned, may, at any time during any fiscal year, elect to be bound thereby, which said election shall be made as hereinbefore provided; but whenever any employer or employé shall have elected to come under the provisions hereof, such election, when it shall have been made, shall bind such employer and employé for the rest of the then fiscal year.

§ 3. (k) No liability under Act without election.—No compensation shall be paid to any employé, whether such employé has elected to come under this Act or not, where his employer has failed to elect, and has failed to come under one or the other of the Compensation Plans herein provided.

§ 4. (a) Declaration of hazardous employments.—This Act is intended to apply to all inherently hazardous works and occupations within this

State, and it is the intention to embrace all thereof in Sections 4 (b), 4 (c), 4 (d), and 4 (e), and the works and occupations enumerated in said sections are hereby declared to be hazardous.

§ 4. (b) **Construction work.**—Tunnels, bridges, trestles, sub-aqueous works, ditches and canals (other than irrigation without blasting), dock excavations, fire escapes, sewers, house moving, house wrecking, iron or steel frame structures or parts of structures, electric lights, or power plants, or systems, telegraph or telephone systems; pile driving; steam railroads, steeples, towers or grain elevators, not metal framed; dry docks, without excavation; jetties, breakwaters, chimneys, marine railways, water works or water systems; electric railways, cable railways, street railways, with or without rock work or blasting; erecting fire-proof doors or shutters; steam heating plants; blasting; tanks, water towers or wind mills, not metal framed; shaft sinking; concrete buildings; freight or passenger elevators; fire proofing of buildings; galvanized iron or tin work; gas works or systems; marble, stone or brick work; roadmaking, with or without blasting; roof work; safe moving; slate work; plumbing work, inside or outside; metal smokestacks or chimneys; excavations not otherwise specified; blast furnaces; street or other grading; advertising signs; ornamental work on buildings; ship or boat building or rigging, with or without scaffolding; carpenter work not otherwise specified; installation of steam boilers or engines; placing wires in conduits; installing dynamos; putting up belts for machinery; marble, mantel, stone or tile setting; metal ceiling work; mill or ship-writing; painting of buildings or structures; installation of automatic sprinklers; concrete laying in floors, foundations or street paving; asphalt laying; covering steam pipes or boilers; installation of machinery not otherwise specified; drilling wells, installing electrical apparatus or fire alarm apparatus in buildings; house heating or ventilating systems, glass setting; building hot houses; lathing, paper hanging, plastering, wooden stair building.

§ 4. (c) **Operation.**—(Including Repair Work) of logging, cable, electric, street, steam or other railroads; dredges; interurban electric railroads using third rail systems; electric light or power plants; quarries; telegraph systems; stone crushers; blast furnaces; smelters; coal mines, gas works; steam-boats; tugs and ferries, mines other than coal; steam heating or power plants; grain elevators; laundries; water works, paper mills; pulp mills; garbage and fertilizer works.

§ 4. (d) **Factories using power driving machinery.**—Stamping tin metal; bridge work; railroad, car or locomotive making or repairing; cooperage; logging, with or without machinery; sawmills, shingle mills, staves, veneer, box, lath, packing cases, sash, doors, blinds, barrel, keg, pail, basket, tub, wooden ware or wooden fibre ware, rolling mills; making steam shovels or dredges; tanks, water towers asphalt; building material not otherwise specified; fertilizers; cement, stone with or without machinery; kindling wood, masts or spars with or without machinery; canneries; metal stamping; creosoting works; excelsior; iron; steel; copper, zinc, brass, or lead articles or wares not otherwise specified; working in wood not otherwise specified; hardware, tile, brick, terra cotta fire clay, pottery, earthenware, porcelain ware; peat fuel, brickettes; breweries; bottling works; boiler works; foundries; machine shops not otherwise specified; cordage; working in food stuffs, including oils, fruits and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber or textiles not otherwise specified; making jewelry;

making soap, tallow, lard, grease, condensed milk; creameries; printing, electrotyping, photo-engraving, engraving and lithographing, sugar factories.

§ 4. **(c) Miscellaneous work.**—Operating stock yards, with or without railroad entry; packing houses; wharf operations; artificial ice and refrigerating or cold storage plants; tanneries; electric systems not otherwise specified; theatre stage employés, including moving picture machine operators; fire works manufacturing, powder works.

§ 5. **Other hazardous employments.**—If there be or arise any hazardous occupation or work other than hereinbefore enumerated, it shall become under this Act and its terms, conditions and provisions as fully and completely as if hereinbefore enumerated.

§ 6. **Definitions.**—Unless the context otherwise required, words and phrases employed in this Act shall have the meaning hereinafter defined.

(a) "Factories" means undertakings in which the business of working at commodities is carried on with power driven machinery, whether in manufacture, repair, or change, and shall include the premises, yards, and plant of the concern.

(b) "Workshop" means any plant, yard, premises, room or place where power driven machinery is employed and manual labor is exercised by way of trade or gain or otherwise in or incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale, or otherwise, any article, or part of article machinery, or thing, over which premises, room or place the employer of the person working therein has the right of access or control.

(c) "Mill" means any plant, premises, room, or place where machinery is used; any process of machinery, changing, altering, or repairing any article or commodity for sale, or otherwise, together with the yards and premises which are a part of the plant, including elevators, warehouses, and bunkers.

(d) "Mine" means any mine where coal, clay, ore, mineral, gypsum, or rock is dug or mined underground.

(e) "Quarry" means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, shale, gravel, or rock is cut or taken for manufacturing, building, or construction purposes.

(f) "Engineering work" means any work of construction, improvement, or alteration or repair of buildings, streets, highways, sewers, street railways, railroads, logging roads, interurban roads, harbors, docks, canals; electric, steam or water power plants; telegraph and telephone plants and line; electric light and power lines, and includes any other work for the construction, alteration, or repair of which machinery driven by mechanical power is used.

(g) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employé as the nature of the employment will reasonably permit.

(h) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to, and are reasonably safe for use for the particular purpose for which they are furnished, and shall embrace all safety devices and safeguards provided or prescribed by the "safety provisions" of the Act for the purpose of mitigating or preventing a specific danger.

(i) "Employer" means any person, firm, association, or corporation, and includes the state, counties, municipal corporations, cities under special char-

ter and commission form of government, school districts, towns, or villages, and independent contractors, and shall include the legal representatives of a deceased employer.

(j) "Employé" and "workman" are used synonymously, and mean every person in this state, including a contractor other than "an independent contractor," who, after July first, 1915, is engaged in the employment of an employer carrying on or conducting any of the industries classified in Section 4 (a), 4 (b), 4 (c), 4 (e), and 5 of this Act, whether by way of manual labor, or otherwise or whether upon the premises or at the plant of such employer, or who is engaged in the course of his employment away from the plant of his employer; provided, however,

1. If the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or, if death results from such injury, beneficiaries or dependents, as the case may be, shall elect whether to take under this Act or seek a remedy against such others; such election shall be made in advance of the commencement of the action.

2. If he take under this Act, the cause of action against such other shall be assigned to the State for the benefit of the Industrial Accident Fund, or the employer or insurer, as the case may be.

3. Any such cause of action assigned to the State may be prosecuted, or compromised by the Board, in its discretion.

4. If such workman, his beneficiaries, or dependents, as the case may be, shall elect to proceed against the person responsible for the injury, such election shall constitute a waiver of any right to compensation under the provisions of this Act.

(k) "Injury" means and shall include death resulting from injury.

(l) "Beneficiary" means and shall include a surviving wife or husband and a surviving child or children under the age of sixteen years and an invalid child or invalid children over the age of sixteen years, or if no surviving wife or husband, then the surviving child or children under the age of sixteen years, and any invalid child or children over the age of sixteen years in whom shall vest a right to receive compensation under this Act.

(m) "Major dependent" means if there be no beneficiaries as defined in Section 6 (l), the father and mother of the survivor of them, if actually dependent to any extent upon the decedent at the time of his injury.

(n) "Minor dependent" means if there be no beneficiary as defined in Section 6 (l), and if there be no major dependent as defined in Section 6 (m), the brothers and sisters, if actually dependent upon the decedent at the time of his injury.

(o) "Invalid" means one who is physically or mentally incapacitated.

(p) "Child" shall include a posthumous child, a step-child, a child legally adopted prior to the injury, an illegitimate child legitimized prior to the injury.

(q) "Injury" or "injured" refers only to an injury resulting from some fortuitous event, as distinguished from the contraction of disease.

(r) Wherever the singular is used the plural shall be included, and wherever the plural is used the singular shall be included.

(s) Wherever the masculine gender is used, the feminine and neuter shall be included.

(t) The term "physician" shall include "surgeon" and in either case shall mean one authorized by law to practice his profession in this State.

- (u) "Week" means six working days, but includes Sunday.
- (v) "Wages" means the average daily wages received by the employé at the time of the injury for the usual hours of employment in a day, and overtime is not to be considered.
- (w) "Wife" or "widow" means only a wife or widow living with, or legally entitled to be supported by the deceased at the time of the injury.
- (x) "Husband" or "widower" means only a husband or widower incapable of supporting himself, and living with, or legally entitled to be supported by the deceased at the time of her injury.
- (y) "Board" means the Industrial Accident Board of the State of Montana.
- (z) "Commissioner" means one of the members of the Industrial Accident Board.
- (aa) "Appointed member of the Board" means that member of the Industrial Accident Board appointed by the Governor.
- (bb) "Order" shall mean and include any decision, rule, regulation, direction, requirement, or standard of the Board, or any other determination arrived at or decision made by such Board, excepting general or local orders as herein specified.
- (cc) "General order" shall mean and include such order made under the safety provisions of this Act as applies generally throughout the State to all persons, employments or places of employment, or employees working in such places of employment classed as hazardous in this Act.
- (dd) "Local order" shall mean and include any ordinance, order, rule, or determination of any public corporation, or any order or direction of any other public official, board, or department upon any matter over which the Industrial Accident Board has jurisdiction.
- (ee) "Pay-roll," "annual pay-roll," or "annual pay-roll for the preceding year," means the average annual pay-roll of the employer for the preceding calendar year, or, if the employer shall not have operated a sufficient or any, length of time during such calendar year, twelve times the average monthly pay-roll for the current year, provided that an estimate may be made by the Board for any employer starting in business where no average pay-rolls are available, such estimate to be adjusted by additional payment by the employer or refund by the Board, as the case may actually be on December 31st of such current year.
- (ff) "Year" unless otherwise specified, means calendar year. "Fiscal year" means the period of time between the first day of July and the 30th day of the succeeding June.
- (gg) "Public corporation" means the State, or any county, municipal corporation, school district, city, city under commission form of government or special charter, town or village.
- (hh) "Insurer" means any insurance company authorized to transact business in this State insuring any employer under this Act.
- (ii) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.
- (jj) "The plant of the employer" shall include the place of business of a third person while the employer has access to, or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.
- (kk) "An independent contractor" is one who renders service in the course of an occupation, representing the will of his employer only as the result of his work and not as to the means by which it is accomplished.

§ 7. (a) **Compensation to children.**—In computing compensation to children and to brothers and sisters, only those under sixteen years of age, or invalid children over the age of sixteen years shall be included, and, in the case of invalid children, only during the period in which they are under that disability (within the maximum time limitations elsewhere in this Act provided), after which payment on account of such person shall cease. Compensation to children, or brothers or sisters (except invalids) shall cease when such persons reach the age of sixteen years.

§ 7. (b) **Death of dependent.**—If any beneficiaries or major or minor dependents of a deceased employé die, or if the widow or widower remarry, the right of such beneficiary or major or minor dependent or such widow or widower, to compensation under this Act shall cease.

§ 8. (a) **Non-resident dependents.**—No compensation under this Act, except as otherwise provided by treaty, shall be paid to any major or minor dependents not residing within the United States at the time of the injury to the decedent.

§ 8. (b) **Non-resident beneficiaries.**—Except as otherwise provided by treaty, no compensation in excess of fifty per centum of the compensation provided in this Act, shall be payable to any beneficiary not residing within the United States at the time of the injury to the decedent; provided, however, that no compensation shall be allowed to any non-resident, alien beneficiary who is a citizen of a government having compensation law which excludes citizens of the United States, either resident or non-resident, from partaking of the benefit of such law in the same degree as herein extended to non-resident beneficiaries.

§ 8. (c) **Compromise with non-resident beneficiary.**—Nothing in Section 8 (b) shall prevent the compromise of any sums due a beneficiary not residing in the United States at the time of the injury to the decedent for a sum less than fifty per centum of the compensation provided in this Act, upon the approval of the Board of such compromise settlement.

§ 8. (d) **Proof of relationship.**—Before payment of compensation to a beneficiary not residing within the United States, satisfactory proof of such relationship as to constitute a beneficiary under this Act shall be furnished by such beneficiary duly authenticated under seal of an officer of a court of law in the country where such beneficiary resides, at such times and in such manner as may be required by the Board. And such proof shall be conclusive as to the identity of such beneficiary, and any other claim of any other person to any such compensation shall be barred from and after the filing of such proof.

§ 9. (a) **Payment to representative—Non-resident beneficiary.**—Payment of compensation to a beneficiary not residing within the United States may be made to any plenipotentiary, or consul or consul agent within the United States, representing the country in which such nonresident beneficiary resides, and the written receipt of such plenipotentiary, or consul, or consular agent shall acquit the employer, the insurer, or the Board, as the case may be.

§ 9. (b) **Same—Minor or incompetent.**—Where payment is due to a child under sixteen years of age, or to a person adjudged incompetent the same shall be made to the parent, or to the duly appointed guardian as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer, or Board, as the case may be. In other cases, payment shall be made to the person entitled thereto, or to his duly authorized representative.

§ 10. (a) **Time limitations.**—In case of personal injury or death, all claims shall be forever barred unless presented within six months from the date of the happening of the accident.

§ 10. (b) **Same—Minor or incompetent—Guardian.**—No limitations of time, as provided in this Act, shall run as against any injured workman who is mentally incompetent and without a guardian, or an injured minor under sixteen years of age who may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitation, as provided in Section 10 (a), shall begin to run on the date of the appointment of such guardian, or when such minor arrives at the age of sixteen years.

§ 11. (a) **Employer liable to employés of sub-contractor.**—Where any employer procures any work to be done, wholly or in part for him by a contractor other than an independent contractor, and the work so procured to be done is a part or process in the trade or business of such employer shall be liable to pay all compensation under this Act to the same extent as if the work were done without the intervention of such contractor. And the work so procured to be done shall not be construed to be "casual employment."

§ 11. (b) **Liability of sub-contractor—Election.**—Where any employer procures work to be done as specified in Section 11 (a), such contractor and his employés shall be presumed to have elected to come under that plan of compensation adopted by the employer, unless they shall have otherwise elected, as provided herein.

§ 11. (c) **Liability of independent contractor.**—Where any employer procures any work to be done, wholly or in part for him, by a contractor, where the work so procured to be done is casual employment as to such employer, then such contractor shall become the employer for the purposes of this Act.

§ 11. (d) **Determination of wages where amount speculative.**—Where any employer procures any work to be done, payment for which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, the wages of the employés receiving such compensation shall be determined by the Board in accordance with the going wage for the same or similar work in the district or locality where the same is to be performed; provided, however, that where an employer procures any work to be done by any contractor, or through him by a sub-contractor, the payment for which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, then and in that event the employer shall not be liable for compensation but such liability shall fall upon the contractor or sub-contractor as the case may be.

§ 12. (a) **Death succeeding injury.**—If an injured employé dies and the injury was the proximate cause of such death, then the beneficiary or the major or minor dependents of the deceased, as the case may be, shall receive the same compensation as though the death occurred immediately following the injury, but the period during which the death benefit shall be paid shall be reduced by the period during, or for which compensation was paid for the injury.

§ 12. (b) **Death from other cause.**—If the employé shall die from some cause other than the injury, there shall be no liability for compensation after his death.

§ 12. (c) **Determination of dependency.**—The question as to who constitutes a beneficiary, or a major or minor dependent, shall be determined as of the date of the happening of the accident to the employé, whether death shall immediately result therefrom or not.

§ 13. (a) **Medical examination.**—Whenever in case of injury the right to compensation under this Act would exist in favor of any employé, he shall, upon the written request of his employer or the insurer, submit from time to time, to examination by a physician, who shall be provided and paid for by such employer or insurer, and shall likewise submit to examination, from time to time, by any physician selected by the Board, or any members or examiner or referee thereof.

§ 13. (b) **Same—Refusal.**—The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employé and his physical condition and ability to attend at the time and place fixed. The employé shall be entitled to have a physician, provided and paid for by himself, present at any such examination. So long as the employé, after such written request shall fail or refuse to submit to such examination, or shall, in any way obstruct the same, his right to compensation shall be suspended. Any physician, employed by the employer, the insurer, or the Board, who shall make or be present at any such examination may be required to testify as to the results thereof.

§ 14. (a) **Mutual agreements as to hospital benefits.**—Nothing in this Act shall be construed as preventing employers and workmen from waiving the provisions of Section 16 (f) of this Act, and entering into mutual contracts or agreements providing for hospital benefits and accommodations to be furnished to the employé.

§ 14. (b) **Requisites of mutual agreements.**—Such hospital contract or agreements must provide for medical, hospital, and surgical attendance for such employé for sickness contracted during the employment, except venereal diseases and sickness as a result of intoxication, as well as for injuries received arising out of and in the course of the employment.

§ 14. (c) **Amount of assessment.**—No assessment of employés for such hospital contracts or benefits shall exceed \$1.00 per month for each employé, except in cases where it shall appear to the satisfaction of the Board, after a hearing had for that purpose that the actual cost of such service exceeds the said sum of \$1.00 per month, and any such findings by the Board may be modified at any time when justified by a change of conditions, or otherwise, either upon the Board's own motion, or the application of any party in interest.

§ 14. (d) **Without profit.**—No profit, directly or indirectly, shall be made by any employer as a result of such hospital contract or assessments. It is the purpose and intent of this Act to provide that where hospitals are maintained by employers such hospitals shall be no more than self-supporting from assessment of employés, and that where hospitals are maintained by other than the employer, all sums derived by assessment of employés shall be paid in full to such hospital without deduction by the employer.

§ 14. (e) **Supervision by Board.**—Each and every hospital maintained wholly or in part by payments from workmen, which furnishes treatment and services to employés for sickness and injury, as provided in this Act, shall be under the supervision of the Board as to the services and treatment rendered such employés, and shall, from time to time, make reports of such services,

attendances, treatments, receipts and disbursements as the Board may require.

§ 14. (f) **No liability for malpractice.**—Neither an employer, an insurer, nor the Board, shall be liable in any way for any act in connection with the treatment or care, or malpractice in treatment or care, of any sickness or injury sustained by an employé, or the beneficiary of any hospital contract, where such act or treatment or malpractice in treatments is caused, or alleged to have been caused by any physician, hospital or attendant furnished by such employer, insurer, or the Board. In any action for malpractice arising out of the operations of this Act the merits of such action shall be investigated by the Industrial Accident Board and the finding of the Board in relation thereto shall be filed with the Clerk of the Court in which such action is pending.

§ 15. **Action for malpractice.**—In any action to recover damages for any act connected with the treatment or care or malpractice in treatment or care, of any sickness of, or injury sustained by an employé, the question of whether or not due care was given by the defendants shall be a question of law for the Court.

§ 16. **Liability for compensation.**—Every employer who shall become bound by and subject to the provisions of Compensation Plan Number One, and every employer and insurer who shall become bound by and subject to the provisions of Compensation Plan Number Two, and the Industrial Accident Fund where the employer of the injured employé has become bound by and subject to the provisions of Compensation Plan Number Three, shall be liable for the payment of compensation in the manner and to the extent hereinafter provided to an employé who has elected to come under this Act, and who shall receive an injury arising out of and in the course of his employment, or, in the case of his death from such injury, to his beneficiaries, if any; or, if none, to his major dependents, if any; or, if none, to his minor dependents, if any.

§ 16. (a) **Temporary total disability.**—For an injury producing temporary total disability, fifty per centum of the wages received at the time of the injury, subject to a maximum compensation of ten dollars per week and a minimum compensation of six dollars per week; provided, that if at the time of injury the employé received wages of less than six dollars per week, that he shall receive the full amount of such wages per week. Such compensation shall be paid during the period of disability, but not, however, in any event, exceeding 300 weeks.

§ 16. (b) **Permanent total disability.**—For an injury producing total disability permanent in character, fifty per centum of the wages received at the time of the injury, subject to a maximum compensation of ten dollars per week, and a minimum compensation of six dollars per week; provided, that if at the time of the injury the employé received wages of less than six dollars per week, then he shall receive the full amount of such wages per week. Such compensation shall be paid during the period of disability, not exceeding 400 weeks, after which time payment shall continue during disability at the rate of five dollars per week.

§ 16. (c) **Partial disability.**—For an injury producing partial disability, one-half of the difference between the wages received at the time of the injury and the wages which such injured employé is able to earn thereafter, not exceeding, however, the difference between the wages which the injured em-

ployé is able to earn after the injury and the maximum compensation allowed in cases of total disability; provided, however, that such a sum shall be paid as compensation in each case, which, when added to the wages which the injured employé is able to earn after the injury, will equal the minimum compensation allowed in cases of total disability. Such compensation shall be paid during the period of disability, not exceeding, however, 150 weeks in cases of permanent partial disability and 50 weeks in cases of temporary partial disability.

§ 16. (d) **Death benefit.**—Where the injury causes death, fifty per centum of the wages received at the time of the injury, to his beneficiaries, if any, residing within the United States at the date of the happening of the injury, or, if residing outside of the United States, fifty per centum of such compensation, or, if none, then forty per centum of the wages received at the time of the injury to his major dependents, if any, if residing in the United States at the date of the happening of the injury, or, if none, then thirty per centum of the wages received at the time of the injury, to his minor dependents, if any, residing within the United States at the date of the happening of the injury, subject to a maximum compensation of ten dollars per week and minimum compensation of six dollars per week, for a period not exceeding 400 weeks; provided, that if at the time of the injury the employé received wages of less than six dollars per week, the full amount of such wages per week for a period of not exceeding 400 weeks.

§ 16. (e) **Burial expenses.**—There shall be paid, in addition to other compensation, if death occurs within six months of the happening of the injury, the reasonable burial expenses of the employé, not exceeding \$75.00. If the employé leaves no beneficiaries, or major, or minor dependents, this shall be the only compensation.

§ 16. (f) **Medical and hospital expenses.**—During the first two weeks after the happening of the injury, the employer or insurer, or the accident fund, as the case may be, shall furnish reasonable medical and hospital services and medicines as and when needed, in an amount not to exceed fifty dollars in value, except as otherwise in this Act provided, and when the employer is a party to a hospital contract, unless the employé shall refuse to allow them to be furnished.

§ 16. (g) **No compensation for first two weeks.**—No compensation shall be allowed or paid during the first two weeks of any injury, except as may be required by the provisions of Section 16 (f).

§ 16. (h) **Payments to run consecutively.**—Compensation for all classes of injuries shall run consecutively and not concurrently, and as follows: First, the two weeks medical and hospital services and medicines as provided in Section 16 (f), unless the employé is a contributor to a hospital fund, as otherwise in this Act provided; after the first two weeks, compensation as provided in Section 16 (a), or 16 (b), or 16 (c); following, either or none of the above, compensation as provided in Section 16 (i); following any or either, or none of the above, if death results from the accident within six months of the date of the injury, burial expenses as provided in Section 16 (e); following which, compensation to beneficiaries, if any; following which, if no beneficiaries, compensation to major dependents, compensation to minor dependents, if any. Provided, that no compensation shall be paid to a major or minor dependent who does not reside within the United States, or who did not reside within

the United States at the date of the happening of the injury. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. Compensation due to major dependents, where there be more than one, shall be divided equally among them.

§ 16. (i) **Specific injuries provided for.**—In case of the following specified injuries, the compensation, in lieu of any other compensation provided by this Act, other than that provided in Section 16 (f), unless the employé is a contributor to a hospital fund as otherwise in this Act provided, shall be fifty per centum of the wages received at the time of the injury, subject to a maximum compensation of ten dollars per week and a minimum compensation of six dollars per week; provided, that if, at the time of the injury the employé received wages of less than six dollars per week, then he shall receive the full amount of such wages per week, and shall be paid for the following periods:

For the loss of:

One arm at or near shoulder.....	200 weeks
One arm at the elbow.....	180 weeks
One arm between wrist and elbow.....	160 weeks
One hand.....	150 weeks
One thumb and the metacarpal bone thereof.....	60 weeks
One thumb at the proximal joint.....	30 weeks
One thumb at the second distal joint.....	20 weeks
One first finger and the metacarpal bone thereof.....	30 weeks
One first finger at the proximal joint.....	20 weeks
One first finger at the second joint.....	15 weeks
One first finger at the distal joint.....	10 weeks
One second finger and the metacarpal bone thereof.....	30 weeks
One second finger at the proximal joint.....	15 weeks
One second finger at the second joint.....	10 weeks
One second finger at the distal joint.....	5 weeks
One third finger and the metacarpal bone thereof.....	20 weeks
One third finger at the proximal joint.....	12 weeks
One third finger at the second joint.....	8 weeks
One third finger at the distal joint.....	4 weeks
One fourth finger and the metacarpal bone thereof.....	12 weeks
One fourth finger at the proximal joint.....	9 weeks
One fourth finger at the second joint.....	6 weeks
One fourth finger at the distal joint.....	3 weeks
One leg at or near the hip joint as to preclude the use of an artificial limb.....	180 weeks
One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb.....	150 weeks
One leg between the knee and ankle.....	140 weeks
One foot at the ankle.....	125 weeks
One great toe with the metatarsal bone thereof.....	30 weeks
One great toe at the proximal joint.....	15 weeks
One great toe at the second joint.....	10 weeks
One toe other than the great toe with the metatarsal bone thereof..	12 weeks
One toe other than the great toe at proximal joint.....	6 weeks

One toe other than the great toe at second or distal joint..... 3 weeks
 One eye by enucleation.....120 weeks
 Total blindness of one eye.....100 weeks

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof, in the absence of conclusive proof to the contrary shall constitute total disability, permanent in character.

§ 16. (j) **Proof necessary in hernia cases.**—A workman in order to be entitled to compensation for hernia must clearly prove: (1) That the hernia is of recent origin, (2) that its appearance was accompanied by pain, (3) that it was immediately preceded by some accidental strain suffered in the course of the employment, and (4) that it did not exist prior to the date of the alleged injury. If a workman, after establishing his right to compensation for hernia, as above provided, elects to be operated upon, a special operating fee of not to exceed fifty dollars shall be paid by the employer, the insurer, or the Board, as the case may be. In case such workman elects not to be operated upon, and the hernia becomes strangulated in the future, the result from such strangulation will not be compensated.

§ 16. (k) **Paralysis of member.**—For the purpose of Section 16 (i), the complete paralysis of an arm, hand, foot, or leg shall be considered the loss of such member. For the purpose of Section 16 (i), the complete paralysis of both arms, both hands, both feet, or both legs, or any two of them, shall be considered the loss of such members.

§ 16. (l) **Second accident.**—Should a further accident occur to a workman, or who has been previously the recipient of a payment or payments under this Act, his further compensation shall be adjusted according to the other provisions of this Act, and with regard to the combined effect of his injuries and his past receipt of compensation.

§ 16. (m) **Adjustment of compensation payments.**—If aggravation, diminution or termination of disability takes place, or be discovered, after the rate of compensation shall have been established, or compensation terminated in any case, where the maximum payments for disabilities as provided in this Act have not been reached, such changes may be adjusted for future application of compensation in accordance with the provisions hereof, or, in a proper case, terminate the payments.

§ 16. (n) **Payments monthly.**—All payments of compensation, as provided in this Act, shall be made monthly, except as otherwise provided herein.

§ 16. (o) **Commutation to lump sum.**—The monthly payments provided for in this Act may be converted, in whole or in part, into a lump sum payment, which lump sum payment shall not exceed the estimated value of the present worth of the deferred payments capitalized at the rate of five per centum per annum. Such conversion can only be made upon the written application of the injured workman, his beneficiary or major or minor dependents, as the case may be, and shall rest in the discretion of the Board, both as to the amount of such lump sum payment, and the advisability of such conversion.

§ 17. (a) **Non-assignability and exemption of payments.**—No payments under this Act shall be assignable, subject to attachment or garnishment, or be held liable in any way for any debts.

§ 17. (b) **Bankruptcy of employer.**—In case of bankruptcy, insolvency, liquidation, or the failure of an employer or insurer to meet any obligations

imposed by this Act, every liability which may be due under this Act shall constitute a first lien upon any deposit made by such employer or insurer, and if such deposit shall not be sufficient to secure the payment of such liability in the manner, and at the times provided for in this Act, the deficiency shall be a lien upon all the property of such employer or insurer within this State, and shall be prorated with other lienable claims and shall have preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors.

§ 17. (c) **Waiver of rights by employé.**—No agreement by an employé to waive any rights under this Act for an injury to be received shall be valid.

§ 17. (d) **Misrepresentation by employer.**—Any employer who shall misrepresent to the Board the amount of a pay-roll upon which the premiums or assessments under Compensation Plan Number Three are to be levied, or upon which fees for factory inspection, subsequent inspection, or re-inspection, as elsewhere provided in this Act, are based, shall be liable to the State in ten times the amount of difference between the amount paid and the amount which should have been paid. Such liability may be recovered in a civil action brought in the name of the State. All sums collected under this section shall be paid into the fund to which the original payments were, or should have been credited.

§ 17. (e) **Application to railroad work.**—The provisions of this Act shall not apply to any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this Act.

§ 17. (f) **Duplicate receipts.**—Every employer coming under the provisions of Compensation Plan Number One, and every insurer coming under the provision of Compensation Plan Number Two, shall, on or before the fifteenth day of each and every month, file with the Industrial Accident Board duplicate receipts for all payments made during the previous month to injured workmen or their beneficiaries or dependents; and statements showing the amounts expended during the previous month for medical, surgical and hospital services and for the burial of injured workmen.

§ 17. (g) **Notice of injury.**—No claims to recover compensation under this Act, for injuries not resulting in death, shall be maintained unless, within sixty days after the occurrence of the accident which is claimed to have caused the injury, notice in writing, stating the name and address of the person injured, the time and the place where the accident occurred and the nature of the injury, and signed by the person injured, or some one in his behalf, shall be served upon the employer or the insurer; provided, however, that actual knowledge of such accident and injury on the part of such employer or his managing agent or superintendent in charge of the work upon which the injured employé was engaged at the time of the injury shall be equivalent to such service.

§ 17. (h) **Employer's report of accident.**—Every employer of labor, and every insurer is hereby required to file with the Board, under such rules and regulations as the Board may from time to time make, a full and complete report of every accident to an employé arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the Board in such form and such detail as the Board shall from time to time prescribe, and shall make specific answer to all

questions required by the Board under its rules and regulations, except, in case he is unable to answer any such questions, a good and sufficient reason shall be given for such failure.

§ 17. (i) **Information not public.**—No information furnished to the Board by an employer or an insurer shall be open to public inspection, or made public except on order of the Board, or by the Board, or a member of the Board in the course of a hearing or proceeding. Any officer or employé of the Board who, in violation of the provisions of this section divulges any information, shall be guilty of a misdemeanor.

§ 17. (j) **Table of mortality.**—Whenever it is necessary to estimate the sum of money to set aside as a reserve in any case, the American Experience Table of Mortality shall be used.

§ 17. (k) **Contributions by employés to premium.**—It shall be unlawful for the employer to deduct or obtain any part of any premium required to be paid by this Act from the wages or earnings of his workmen, or any of them, and the making, or attempt to make any such deduction shall be a misdemeanor, except that nothing in this section shall be construed as prohibiting contributions by employés to a hospital fund as elsewhere in this Act provided.

§ 18. (a) **Rules of practice and procedure.**—All hearings and investigations before the Board, or any member thereof, shall be governed by this Act and by rules of practice and procedure to be adopted by the Board, and in the conduct thereof neither the Board, nor any member thereof shall be bound by the technical rules of evidence. No informality in any proceedings, or in the manner of taking testimony shall invalidate any order, decision, award, rule or regulation made, approved, or confirmed by the Board.

§ 18. (b) **Depositions.**—The Board, or any member thereof or any party to the action or proceeding may, in any investigation or hearing before the Board, cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in the district courts of this State, and to that end may compel the attendance of witnesses and the production of books, documents, papers, and accounts.

§ 18. (c) **Powers of Board.**—The Board is hereby vested with full power, authority and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this Act.

§ 18. (d) **Same—Process.**—The Board and each member thereof shall have power to issue writs of summons, warrants of attachment, warrant of commitment, and all necessary process in proceedings for contempt in like manner and to the same extent as courts of record. The process issued by the Board, or any member thereof, shall extend to all parts of the State and may be served by any persons authorized to serve process of courts of record, or by any person designated for that purpose by the Board, or any member thereof.

The person executing any such process shall receive such compensation as may be allowed by the Board, not to exceed the fees now prescribed by law for similar service and such fees shall be paid in the same manner as provided herein for the fees of witnesses.

§ 18. (e) **Same—Witnesses.**—The Board, and each member thereof, its secretary and referees shall have the power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any injury, investigation, hearing, or proceeding in any part of the State. Each witness who shall appear, by order of the Board, or any member thereof shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the District Court, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the Board. When any witness, who has not been required to attend at the request of any party, is subpoenaed by the Board, his fees and mileage may be paid from the funds, appropriated for the uses of the Board in the same manner as other expenses of the Board are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the Board, may at the time of service demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to attend before the Board, or a member thereof or referee, as directed in the subpoena.

§ 18. (f) **Compelling attendance of witnesses.**—The District Court in and for the county in which any inquiry, investigation, hearing or proceeding may be held by the Board, or any member thereof, shall have the power to compel the attendance of witnesses, the giving of testimony and the production of papers, books, accounts and documents as required by any subpoena issued by the Board, or any member thereof. The Board, or any member thereof, before whom the testimony is to be given or produced in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the District Court in and for the County in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place fixed for the attendance of said witness, or the production of said papers, and that the witness has been summoned in the manner prescribed in this Act, and that the witness has failed and refused to attend, or produce the papers required by the subpoena before the Board or any member thereof in the case of proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceedings, and ask an order of said court compelling the witness to attend and testify or produce said papers before the Board. The court, upon the petition of the Board, or any member of the Board, shall enter an order directing the witness to appear before the court at the time and place to be fixed by the court in such order not more than ten days from the date of the order, and then and there show cause why he had not attended or testified, or produced such papers before the Board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the Board, or a member thereof, and regularly served, the court shall thereupon enter an order that said witness appear at the time and place fixed in said order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court. The remedy provided in this section is cumulative and shall not be construed to impair or interfere with the power of the Board,

or a member thereof, to enforce the attendance of witnesses and the production of papers, and to punish for contempt, in the same manner and to the same extent as courts of record.

§ 18. (g) **Documents as evidence.**—Copies of official documents and orders filed or deposited according to law in the office of the Board certified by a member of the Board or by the secretary under the official seal of the Board to be true copies of the original shall be evidence in like manner as the originals. *

§ 18. (h) **Apportionment of costs.**—The costs and disbursements, incurred in any proceeding or hearing before the Board, or a member thereof, may be apportioned between the parties on the same or adverse sides in the discretion of the Board.

§ 19. **Investigation of employer's books.**—The books, records, and pay-rolls of the employer, pertinent to the administration of this Act shall always be open to inspection by the Board or any duly authorized employé thereof, for the purpose of ascertaining the correctness of the pay-roll; the number of men employed, and such other information as may be necessary for the Board and its management under this Act. Refusal on the part of the employer to submit said books, records, and pay-rolls for such inspection shall subject the offending employer to a penalty of One Hundred Dollars for each offense, to be collected by civil action in the name of the State, and paid into the Industrial Administration Fund.

§ 20. (a) **Determination of controversies.**—All proceedings to determine disputes or controversies arising under this Act shall be instituted before the Board, and not elsewhere, and heard and determined by them, except as otherwise in this Act provided, and the Board is hereby vested with full power, authority and jurisdiction to try and finally determine all such matters, subject only to review in the manner and within the time in this Act provided.

§ 20. (b) **Orders of Board presumed lawful.**—All orders, rules, and regulations, findings, decisions, and awards of the Board in conformity with law shall be in force and shall be prima facie lawful; and all such orders, rules, and regulations, findings, decisions, and awards shall be conclusively presumed to be reasonable and lawful, until and unless they are modified or set aside by the Board or upon review.

§ 20. (c) **Filing of findings.**—After a final hearing by the Board, it shall within thirty days make and file its findings upon all facts involved in the controversy, and its awards, which shall state its determination as to the right of the parties.

§ 20. (d) **Amount and manner of payment.**—The Board in its award may fix and determine the total amount of compensation to be paid and specify the manner of payment, or may fix and determine the weekly disability indemnity to be paid and order payment thereof during the continuance of such disability; providing, however, that the payment of such award and indemnity shall be in the same manner as that of undisputed awards and indemnities coming within the particular plan provided for in this Act to which said award and indemnity belong.

§ 20. (e) **Nominal indemnity.**—If in any proceeding it is proved that an accident has happened for which the employer would be liable to pay compensation if disability has resulted therefrom, but it is not proved that an

incapacity has resulted, the Board may instead of dismissing the application, award a nominal disability indemnity if it appears that disability is likely to result at a future time.

§ 20. (f) **Continuing jurisdiction.**—The Board shall have continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter or amend any such order, decision, or award made by it upon good cause appearing therefor. Any order, decision or award rescinding, altering, or amending a prior order, decision or award, shall have the same effect as original orders, or awards.

§ 20. (g) **Record of the Board.**—A full and complete record shall be kept of all proceedings and hearings had before the Board or any member thereof, of any formal hearing had and all testimony produced before the Board, or any member thereof, shall be taken down by a stenographic reporter appointed by the Board, and the parties shall be entitled to be heard in person or by attorney. In cases of an action to review any order or decision of the Board, a transcript of such testimony, together with all exhibits, and of the pleadings, records and proceedings in the cause shall constitute the record of the Board.

§ 20. (h) **No collateral attack on Board's orders.**—No orders or decisions of the Board shall be subject to collateral attack, and may be reviewed or modified only in the manner provided herein.

§ 21. (a) **Grounds of rehearing.**—At any time within twenty days after the service of any order or decision of the Board, any party or parties aggrieved thereby may apply for a rehearing upon one or more of the following grounds and upon no other grounds.

1. That the Board acted without or in excess of its powers.
2. That the order, decision or award was procured by fraud.
3. That the evidence does not justify the findings.
4. That the applicant has discovered new evidence, material to him, and which he could not, with reasonable diligence, have discovered and produced at the hearing.
5. That the findings do not support the order, decision or award.
6. That the order, decision, or award is unreasonable.

§ 21. (b) **Rehearing.**—Nothing contained in Section 21 (a) shall, however, be construed to limit the right of the Board, at any time after the date of its award, and from time to time after due notice and upon the application of any party interested, to review, diminish or increase within the limits provided by this Act, any compensation awarded upon the grounds that the disability of the person in whose favor such award was made has either increased or diminished or terminated.

§ 21. (c) **Application for rehearing.**—The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers said order, decision, award, rule, or regulation to be unjust or unlawful, and shall in other respects conform to such rules and regulations as the Board may prescribe.

§ 21. (d) **Procedure.**—The Board shall have full power and authority to make and prescribe rules to govern the procedure upon rehearing, and any matter before it and any order made after such rehearing abrogating or changing the original order shall have the same force and effect as an original order

and shall not affect any right, or enforcement of any right, arising from or by virtue of the original order.

§ 21. (e) **No stay of enforcement.**—An application for rehearing or the appeal hereinafter provided shall not excuse any employer, employé, or other person, from complying with or obeying any order or requirement of the Board, or operate in any manner to stay or postpone the enforcement of an order or requirement thereof, except as the Board or the Court may direct.

§ 22. (a) **Appeal.**—Within thirty days after the application for a rehearing is denied, or, if the application is granted, within thirty days after the rendition of the decision on the rehearing, and within twenty days after notice thereof, any party affected thereby may appeal to the District Court of the Judicial District of the State of Montana, including the County in said State wherein the employer may have his place of residence, or if such employer be a corporation, may have its principal office or place of business, or if said appeal be prosecuted by an injured workman or his dependents, such appeal may be taken to the District Court wherein is located the county within which such workman was injured, which said appeal shall be for the purpose of having the lawfulness of the original order, decision or award, or the order, decision or award on rehearing inquired into and determined.

§ 22. (b) **Taking of appeal.**—Said appeal shall be taken by serving a written notice of said appeal upon the chairman of such Industrial Accident Commission, or upon any other member thereof, which said service shall be made by the delivery of a copy of such notice to such chairman or member, and filing the original with the clerk of the court to which said appeal is taken. A copy of such notice must also be served upon the adversary party if there be any, by mailing the same to said adversary party to such address of such party as said party shall have left with the Board. If such party shall have left no address with the Board then no service upon such party shall be required. The order of filing and service of said notice is immaterial. Immediately upon service upon said Board of said notice, the said Board shall certify to said District Court the entire record and proceedings, including all testimony and evidence taken by said Board, with the Clerk of said District Court. Immediately upon the return of such certified record, the District Court shall fix a day for the hearing of said cause, and shall cause notice to be served upon the Board and upon the appellant, and also upon the adversary party, if there be any. The court may, upon the hearing, for good cause shown, permit additional evidence to be introduced, but, in the absence of such permission from the Court, the cause shall be heard on the record of the Board as certified to the court by it. The trial of the matter shall be de nova, and upon such trial the court shall determine whether or not the Board regularly pursued its authority, and whether or not the findings of the Board ought to be sustained, and whether or not such findings are reasonable under all the circumstances of the case.

§ 22. (c) **Decision of court.**—The Board, and each party to the action or proceeding before the Board, shall have the right to appear in the proceeding, and it shall be the duty of the Board to so appear. If the Court shall find from such trial, as aforesaid, that the findings and conclusions of the Board are not in accordance with either the facts or the law, or that they ought to be other or different than those made by the Board, or that any finding or conclusion or any order, rule or requirement of the Board is unrea-

sonable, the Court shall set aside such finding, conclusion, order, judgment, decree, rule, or requirement of said Board, or shall modify or change the same as law and justice shall require, and the Court shall also make and enter any finding, conclusion, order or judgment that shall be required, or shall be legal and proper in the premises.

§ 22. (d) **Appeal to Supreme Court.**—Either the Board, or the appellant, or any adversary party, if there be one, may appeal to the Supreme Court of the State of Montana, from any final order, judgment or decree of the said District Court, which said appeal shall be taken in like manner as appeals are now taken in other civil actions to the said Supreme Court, and upon such appeal the said Supreme Court shall make such orders in reference to a stay of proceedings as it finds to be just in the premises, and may stay the operation of any order, judgment, or decree of said District Court without requiring any bond or undertaking from the applicant for such stay. When any such cause is so appealed it shall have precedence upon the calendar of the said Supreme Court, and shall be tried anew by said Supreme Court upon the record made in said District Court and before said Board, and judgment and decree shall be entered therein as expeditiously as possible.

§ 23. (a) **Appropriation.**—There is hereby appropriated out of the State Treasury, the sum of Fifty Thousand (\$50,000.00) Dollars, or so much thereof as may be necessary, to be known as the Industrial Administration Fund, out of which the salaries, traveling and office expenses of the Board shall be paid, and all other expenses incident to the administration of this Act.

§ 23. (b).—There is hereby appropriated out of the Industrial Accident Fund such sums as may be necessary to pay the Compensation provided for in this Act.

§ 24. (a) **Liberal construction.**—Whenever this Act, or any part or section thereof, is interpreted by a court, it shall be liberally constructed by such court.

§ 24. (b) **Validity of sections independent.**—If any section, subsection, subdivision, sentence, clause, paragraph, or phrase of this Act is for any reason held to be unconstitutional or void, such decision shall not affect the validity of the remaining portions of this Act, so long as sufficient remains of the Act to render the same operative and reasonably effective for carrying out the main purpose and intention of the Legislature in enacting the same as such purpose and intention may be disclosed by the Act.

§ 24. (c) **Industrial Accident Fund—Distribution.**—The moneys coming into the Industrial Accident Fund shall be held in trust for the purpose for which such fund is created, and if this Act shall be hereafter repealed, such moneys shall be subject to such disposition as may be provided by the Legislature repealing this Act; in default of such legislative provision, distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

§ 24. (d) **Existing cause of action.**—This Act shall not affect any action pending or any cause of action existing on the thirtieth day of June, 1915.

§ 25. (a) **Annual report of Board.**—The Board shall, not later than the first day of October of each year, make a report to the Governor covering its entire operations and proceedings for the preceding fiscal year, with such suggestions or recommendations as it may deem of value for public informa-

tion. A reasonable number of copies of such report shall be printed for general distribution.

§ 25. (b) **When Act effective.**—This Act shall take effect and be in force from and after its passage and approval, except as to its compensation provisions, which shall not take effect until the first day of July, 1915.

PART II.—COMPENSATION PLAN NUMBER ONE.

§ 30. (a) **Compensation direct to employé.**—Any employer in the industries, trades, works, occupations, or employments in this Act specified as hazardous, by filing his election to become subject to and be bound by Compensation Plan Number One, upon furnishing satisfactory proof to the Board of his solvency and financial ability to pay the compensation, and benefits in this Act provided for, and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective, may by order of the said Board, make such payments directly to his employés as they may become entitled to receive the same under the terms and conditions of this Act.

§ 30. (b) **Proof of solvency—Permission to pay directly.**—Every such employer now or hereafter engaged in the State of Montana, in the industries, trades, works, occupations or employments herein mentioned, and who shall have elected to be bound by such Compensation Plan Number One, shall file such proof of his solvency within the time and in such form as may be prescribed by the rules or orders of the Board.

If such employer, making such election, shall be found by the Board to have the requisite financial ability to pay the compensation and benefits in this Act provided for, then the Board shall grant to such employer permission to carry on his said business for the fiscal year within which such election is made, and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employés as they may become entitled to receive the same. Every employer, so long as he continues in his said employment, and so long as he continues to be bound by such Compensation Plan Number One, shall at least thirty days before the expiration of each fiscal year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employés for the next ensuing fiscal year and under like circumstances as those mentioned for the granting of such permission upon such first application, the Board may renew the same from year to year.

§ 30. (c) **Additional proof of solvency—Revocation of permission.**—The Board may at any time require from any employer acting under Compensation Plan Number One additional proof of solvency and financial ability to pay the compensation provided by this Act, and may at any time, upon notice to such employer, of not less than ten or more than twenty days, after and upon a full hearing, revoke any order or approval theretofore made.

§ 30. (d) **Security for payment.**—If said Industrial Accident Board shall find that such employer has not financial responsibility for the payment of the compensation herein provided to be paid which might reasonably be expected to be chargeable to such employer during the fiscal year to be covered by such permission, said Industrial Accident Board must so find, and must require such employer, before granting to him such permission, or before con-

tinuing or engaging in such employment, subject to the provisions of Compensation Plan Number One, to give security for such payment, which security must be in such an amount as said Board shall find it reasonable and necessary to meet all liabilities of such employer which may reasonably and ordinarily be expected to accrue during such fiscal year. Said security must be deposited with the Treasurer of the Board and may be a certain estimated per centum of said employer's last preceding annual pay-roll, or a certain per centum of the established amount of his annual pay-roll for said fiscal year, or said security may be in the form of a bond or undertaking executed to said Industrial Accident Board in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that such employer will well and truly pay or cause to be paid, all such sums and amounts for which the employer shall become liable under the terms of this Act to his employes during said fiscal year or such security may consist of any State, county, municipal, or school district bonds, or the bonds or evidence of indebtedness of any individuals or corporations which the Board may deem solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the Board as in its judgment may be required and upon proof of the final payment of the liability for which such securities are given, such securities, or any remaining part thereof shall be returned to the depositor. The Treasurer of the Board and his bondsmen shall be liable for the value and safe keeping of all such deposits or securities, and shall at any time, upon demand of the bondsmen or the depositor or the Board, account for the same, and the earnings thereof.

§ 30. (e) **Failure to pay—Collection on securities.**—Upon the failure of said employer to pay any compensation provided for in this Act upon the terms and in the amounts and at the time when the same shall become due and payable, it shall be the duty of such State Accident Board, upon demand of the person to whom compensation is due, to apply any deposits made with the Board to the payment of the same, and it shall be its duty to take the proper steps to convert any securities on deposit with the said Board, or sufficient thereof, into cash and to pay the same upon the liabilities of said employer, accruing under the terms of this Act, and it shall be its duty, insofar as the same shall be necessary, to collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the said employer to insure the payment of his said liability. And to these ends, and for these purposes, the Board shall be deemed to be the owner of said deposit and security and the obligee in said bond in trust for the said purposes and may proceed in its own name to recover upon such bonds or foreclose and liquidate said securities.

§ 30. (f) **Additional deposit after accident.**—Within thirty days after the happening of an accident where death or the nature of the injury renders the amount of future payments certain, or reasonably certain, the employer shall make a deposit or give security as herein defined with the Treasurer of the Board for the protection and guaranty of the payment of such liability in such sum as the Board may direct; provided, however, that if sufficient securities are already on deposit with the said Board or if the said Board shall have determined that the employer has sufficient financial responsibility to meet said liability of the said employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

§ 30. (g) **Relief from liability.**—Any employer against whom liability may exist for compensation under this Act may, with the approval of the Board, be relieved therefrom by (1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum per annum, with the Treasurer of the Board; or (2) purchasing an annuity within the limitations provided by law, in any insurance company granting annuities, and authorized to transact business in this State, subject to the approval of the Board.

PART III.—COMPENSATION PLAN NUMBER TWO

§ 35. (a) **Insurance of liability.**—Any employer in the industries, trades, works, occupations, or employments in this Act specified as hazardous, by filing his election to become subject to and bound by Compensation Plan Number Two, may insure his liability to pay the compensation and benefits herein provided for, in any insurance company authorized to transact such business in this State.

§ 35. (b) **Same—Under supervision of Board.**—Any employer electing to become subject to and bound by compensation Plan Number Two shall file with the Board written acceptance of the provisions of Compensation Plan Number Two, together with a statement upon forms provided by the Board of the nature of his employment, the character and location of his work, the number of men employed during the preceding year, or any part of the preceding year, and the probable number of men to be employed during the first fiscal year to be covered by such election, and the Board shall thereupon, determine the amount of insurance which will be reasonably necessary to secure the compensation with which the said employer may reasonably be expected to become chargeable during such fiscal year. And thereupon, the said employer shall file the policy or policies of insurance herein provided for with the Board, which policy or policies shall insure in the amounts so fixed by the Board against any and all liability of the employer to pay the compensation and benefits provided for in this Act. The amounts of such insurance shall be fixed by the Board for each ensuing fiscal year during which said employer shall engage in his said employment, and shall remain subject to the provisions of Compensation Plan Number Two, and for the purpose of fixing such amount of said insurance, the said Board may make all reasonable and necessary investigation, and the said employer shall furnish to such Board all information which it may require.

§ 35. (c) **Requisites of policy.**—All policies insuring the payment of compensation under this Act must contain a clause to the effect that as between the employé and the insurer the notice to, or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this Act shall be jurisdiction of the insurer; and that the insurer shall, in all things, be bound by and subject to the awards, orders, judgments, or decrees rendered against such insured.

§ 35. (d) **Same.**—No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments in this Act provided for and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice

required by such policy or by this Act, or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation.

§ 35. (e) **Presumed subject to Act.**—Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this Act. No insurer shall enter into any such policy of insurance unless its form shall have been approved by the Board, and as otherwise provided by law.

§ 35. (f) **Renewals.**—Every renewal of such policy shall be made and delivered to said Board at least thirty days prior to the expiration of the expiring policy.

§ 35. (g) **Deposit by insurer.**—Within thirty days of the happening of an accident where death, or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit as herein defined with the Treasurer of the Board for the protection and guaranty of the payment of such liability in such sum as the Board may direct.

§ 35. (h) **Relief from liability.**—Any insurer against whom liability may exist for compensation under this Act may, with the approval of the Board, be relieved therefrom by (1) depositing the present value of the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum per annum, with the Treasurer of the Board; or (2) by purchasing an annuity within the limitations provided by law in any insurance company granting annuities and authorized to transact business in this State, subject to the approval of the Board.

§ 35. (i) **Cancellation of policy.**—No policy of insurance issued under the provisions of Compensation Plan Number Two shall be cancelled within the time limited for its expiration except upon thirty days' notice to the employer in favor of whom such policy is issued, and to the Board, unless such policy sought to be cancelled shall have been sooner replaced by other insurance.

§ 35. (j) **Insurer's report of accident.**—Every insurance company transacting business under this Act, shall, at the time and in the manner prescribed by the Board, make and file with the Board such reports of accidents as the Board may require.

§ 35. (k) **Insurer directly liable—Approval of policy.**—Every policy or contract insuring against liability for compensation under Compensation Plan Number Two must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employé or in case of death, to his beneficiaries, or major or minor dependents, the compensation, if any, for which the employer is liable. Every such policy shall at all times be subject to the approval, change, or revision by the Board, and shall contain the clauses, agreements, and promises required by this Act.

§ 35. (l) **Deposit for security.**—Any deposit made under the provisions of Compensation Plan Number Two shall be held in trust by the Treasurer of the Board as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the Board, as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor, by withdrawing the same, or any part there-

of, and substituting other deposits therefor; upon proof of the final payment of the liability for which such deposit was made, any deposit remaining shall be returned to the depositor. All earnings made by such deposit shall be first applied upon any liability of the depositors and if no such liability exists, then such earnings shall upon demand be delivered to such depositor. The Treasurer of the Board and his bondsmen shall be liable for the value and safe-keeping of such deposit, and shall at any time, upon demand of his bondsmen, the depositor, or the Board, account for the same and the earnings thereof.

PART IV.—COMPENSATION PLAN NUMBER THREE

§ 40. (a) **Premiums payable—Classes.**—Every employer, subject to the provisions of Compensation Plan Number Three, shall, in the manner and at the times herein specified, pay into the State Treasury, in accordance with the following schedule, a sum equal to the percentage of his total annual payroll specified in this section; which said schedule is subdivided into classes, and the percentage of payments of premiums or assessments to be required from each of said classes is as follows:

Class One—Broom or brush manufacturing without sawmill; theatre stage employes; moving picture operators; electrotyping; engraving; lithographing; photo engraving; stereotyping; embossing; bookbinding; printing; jewelry manufacturing; not otherwise specified; *sixty-five one hundredths of one per centum.*

Class Two—Cloth, textile, and wool manufacturing, not otherwise specified; wharf employes, other than stevedores and longshoremen; *eight-tenths of one per centum.*

Class Three—Manufacturing alcohol, drugs, other than ammonia; candy, crackers, saddles, harness, leather novelties, mattresses, not including spring or wire, paint, varnish, wagons, buggies, carriages, sleighs, cutters; operation of tugs and steamboats; manufacturing roofing paper and articles of paper not otherwise specified, paper boxes, automobiles, motor trucks, hardware; working in rubber, not otherwise specified; manufacturing boots and shoes; manufacturing articles of and working in leather not otherwise specified; *one and three-tenths per centum.*

* *Class Four*—Manufacturing cheese, condensed milk; operating creameries, manufacturing spices and condiments; paper hanging; kalsomining; white-washing; making willow baskets; setting tiles; mantles and marble work, inside work only; making grease, lard, soap, tallow; inside plumbing work; installing heating systems; painting and decorating, inside work only; metal ceiling work; *one and four-tenths per centum.*

Class Five—Manufacturing glass; operating breweries, bottling works, grain warehouses, grain elevators; manufacturing articles of brass, copper, lead and zinc; operating machine shops, not otherwise specified; lathing, plastering; canneries of meat, fruit, vegetables, or fish, not including can manufacturing; cutting stone or paving blocks, other than in quarries, with or without machinery; installing electrical apparatus inside; installing fire alarm apparatus inside; covering boilers or steam pipes; concrete laying in floors, street paving or sidewalks, not otherwise specified; laying asphalt and other paving not otherwise specified; including shop and yard; manufacturing canoes and rowboats; well drilling; constructing and repairing of paving of bricks or blocks; *one and five-tenths per centum.*

Class Six—Operating of laundries with power, dyeing, bleaching, and cleaning works; manufacturing of furniture, show-cases, office and store furniture and fixtures; cabinet making; manufacture of wire mattresses, bed springs, wooden coffins, caskets, rough wooden boxes for coffins; building hot houses, working in food stuffs, fruits, edible oils or vegetables, not otherwise classified; operating flour mills, chop mills, feed mills; *one and six-tenths per centum*.

Class Seven—Manufacturing wood fibre ware; installing automatic sprinklers or ventilating systems; setting glass; erecting fireproof doors and shutters inside of buildings; operating tanneries, sugar factories; beveling glass; manufacturing peat fuel; building wooden stairs; manufacturing brick, including kilns and buildings and diggings in pits, brickettes; brooms with sawmills, earthenware, fire clay, porcelain ware, pottery, tile, terra cotta; brush making with sawmills; *one and eight-tenths per centum*.

Class Eight—Manufacturing of ammonia; operating water works, gas works; grading, either of streets or otherwise, or road making, without blasting; construction of plank road, plank street or plank sidewalk; operating creosoting works; pile treating works; treating ties or other timber products; plumbing, both at and away from the shop, including house connections, without blasting; construction of water works, gas works and coke ovens, including laying of mains and connections, without blasting; *one and nine-tenths per centum*.

Class Nine—Manufacturing artificial ice; operating refrigerator plants, cold storage plants, foundries, packing houses, including slaughtering; manufacturing agricultural implements, threshing machinery, traction engines, harvesting machinery; manufacturing asphalt; operating steam heating and power plants; manufacturing gas or gasoline engines; operating ferries; stone crushing; not at quarries; boat or ship building, other than canoes or row-boats, without scaffolds; laying hot flooring compositions, not otherwise specified; operating stock yards; *two per centum*.

Class Ten—Operating paper mills, pulp mills, longshoring, stevedoring, manufacturing fertilizers; operating garbage works; incinerators, crematories, lime kilns or burners, no quarrying; installing boilers, steam engines, dynamos, machinery not otherwise specified; putting up belts for machinery; manufacturing barrels, kegs, pails, staves, tubs, excelsior, veneer, packing cases, sash doors and blinds; operation and maintenance of interurban rail-ways, without third rail; *two and two-tenths per centum*.

Class Eleven—Millwrighting, not otherwise specified; manufacturing building material, not otherwise specified; working in building material, not otherwise specified; *two and one-quarter per centum*.

Class Twelve—Operation of smelters; manufacturing of metallic coffins; manufacturing of iron and steel; boat or ship rigging; planing mills, independent; cement manufacturing; operating blast furnaces; *two and three-tenths per centum*.

Class Thirteen—Street or road making, with blasting; manufacturing wood baskets, kindling wood, window and door screens, cordage and rope; manufacturing and refining oil; placing wires in conduits; *two and four-tenths per centum*.

Class Fourteen—Concentrating and amalgamating of ores; wood working, not otherwise specified; operating gravel bunkers; hauling gravel; operating

gravel pits; operating wood saws; painting, exterior work; operating boiler works; making steam shovels; boilers; shipwrecks; operating sawmills, lath mills; bridge work factories; operation of and work in mines, other than coal; *two and five-tenths per centum*.

Class Fifteen—Operating rolling mills; manufacturing tanks, not otherwise specified; erecting and repairing advertising signs; harvesting and storing of ice, including loading on cars; making and repairing of locomotives and railroad cars; cutting stone at stone yards connected with quarries; boat or ship building with scaffolds; logging operations, with or without machinery; booming or driving logs, ties, or other timber products; operating shingle mills; operating quarries; *two and three-quarters per centum*.

Class Sixteen—Operating dredges; construction of telephone and telegraph system; construction of dams and reservoirs, electric light and power plants, water works and water systems; installing furnaces; constructing blast furnaces; sewer building, maximum depth of excavation at any point seven feet; operation and maintenance of steam railways, including logging railways; operating coal mines; *three per centum*.

Class Seventeen—Operating dry docks, including floating dry docks; ornamental metal work within buildings; electric railway construction, without rock work or blasting; railroad construction, including street and cable railways, without rock work or blasting; building canals, without rock work or blasting; installing freight or passenger elevators; operation of telephone and telegraph systems; making dredges; constructing dry docks; *three and one-quarter per centum*.

Class Eighteen—Carpenters not otherwise specified; constructing grain elevators, not metal framed; stump pulling with donkey engines; steam, electric and cable railway construction, with rock work or blasting; construction of logging railways, with rock work or blasting; operation and maintenance of electric railways using third rail, and street railways, all systems, including electric and cable; operation and maintenance of electric light and power plants, including transmission systems and extensions of lines; electric systems, not otherwise specified; *three and one-half per centum*.

Class Nineteen—Pile driving; clearing land with blasting; galvanized iron or tin works; marble work; fire proofing of buildings, by means of wire netting and concreting; cellar excavation, with or without blasting; *three and three-quarters per centum*.

Class Twenty—Constructing breakwaters, marine railways and jetties; installation and repair of electrical apparatus, not otherwise specified, outside work only; stamping of metal or tin; building trestles and tunnels other than mining; shaft sinking, not otherwise specified; *four per centum*.

Class Twenty-One—Moving safes, boilers, machinery; construction of tanks, water-towers, windmills, not metal frame; plumbers making house connections with blasting; roof work; slate work; stone work; stone setting; brick work construction, not otherwise specified; construction of canals, with rock work or blasting; bridge building, wooden; construction of floating docks; constructing chimneys of metal or concrete; *four and one-half per centum*.

Class Twenty-Two—Excavations, not otherwise specified; laying of mains and connections, with blasting; sewer building, where maximum depth of excavation at any point exceeds seven feet; blasting, not otherwise specified; manufacturing fire works; *five per centum*.

Class Twenty-Three—Erecting fire escapes, fire-proof doors and shutters outside of buildings; building concrete structures, not otherwise specified; concrete or cement work not otherwise specified; *six per centum*.

Class Twenty-Four—Constructing iron or steel frame structures or parts; constructing and repairing steel frames and structures; sub-aqueous work; caisson work; *six and one-half per centum*.

Class Twenty-Five—House moving, house wrecking; construction or repair of steeples; construction of brick chimneys; *six and three-quarters per centum*.

Class Twenty-Six—Manufacturing powder, dynamite and other explosives, not otherwise specified; *ten per centum*.

Class Twenty-Seven—Any employer and his employes engaged in non-hazardous work or employment by their joint election, filed with and approved by the Board, may accept the provisions of Compensation Plan Number Three. In such event, such employer and employes shall be known as Class Twenty-seven, the rate of assessment in which shall be *one-half of one per centum*.

§ 40. (b) **Several occupations in business.**—If a single establishment or work comprises several occupations listed in Section 40 (a) in different classifications, the assessment shall be computed according to the pay-roll of each occupation if clearly separable; otherwise an average rate of assessment shall be charged for the entire establishment, taking into consideration the number of employes and the relative hazards.

§ 40. (c) **Changes in classes.**—The classification of hazardous occupations in Section 40 (a) and the rates of premium or assessment therein fixed are advisory only, and the Board is hereby given full power and authority to rearrange, revise, add to, take from, change, modify, increase, or decrease any classification or rate named in Section 40 (a) as in its judgment or experience may be necessary or expedient; provided, that no change in the classification or rates prescribed in Section 40 (a) shall be made effective prior to the end of the first fiscal year, and thereafter any changes so made shall not become effective until thirty days after the date of the order or decision of the Board making such change except that in case of new industries, or industries not enumerated in Section 40 (a), the Board shall have the right to make an immediate classification thereof and establish a rate therefor.

§ 40. (d) **Each industry liable for all.**—It is the intent and purpose of Compensation Plan Number Three that each industry, trade, occupation, or employment coming under the provisions of said plan shall be liable and pay for all injuries happening to employes coming under the provisions of said plan, and that all funds collected by assessments as herein provided shall be paid into one common fund to be known as the Industrial Accident Fund, which fund shall be devoted exclusively to the payment of all valid claims for injuries happening in each industry, trade, occupation, or employment coming under the provisions of Compensation Plan Number Three; Provided that accounts shall be kept with each industry, trade, occupation or employment in according with the foregoing classifications, or otherwise, as the Board may direct, both as to receipts and disbursements, for the purpose of providing information and statistics necessary for determining any changes in such rates or classifications.

§ 40. (e) **Monthly payments.**—There shall be collected from all classes as initial payment into the Industrial Accident Fund, on or before the

fifteenth day of July, 1915, one-fourth of the premium of assessment for that fiscal year and one-twelfth thereof at the first of each month beginning with October first, 1915; provided, that if such fund shall have a sufficient balance on hand at the end of the first three months, or any month thereafter, to meet the requirements of the Industrial Accident Fund, no assessment shall be called for such month.

§ 40. (f) **Adjustment of accounts.**—The first payment shall be collected upon the pay-roll of the months of April, May and June, 1915. At the end of each calendar year an adjustment of the account shall be made upon the basis of the actual pay-roll. Any shortage shall be made good within thirty days thereafter. Every employer who shall enter into business at any intermediate day shall make his payments in the same manner and upon the same basis before commencing operations; the amount of such payments shall be calculated upon his estimated pay-roll, and an adjustment shall be made on or before February first in the year following, in the manner above provided.

§ 40. (g) **Default of payment.**—Any employer who is in default in the observance of any order of the Board, issued pursuant to the provisions of Section 40 (a) to 40 (f) inclusive, shall, in addition to any other penalty provided by this Act, be charged an advance of twenty-five per centum over the established rate, and such advanced rate shall continue and be in force until such employer shall have ceased to be in such default.

§ 40. (h) **Equalization of rates.**—Any change in classification of risks or premium rates, or any change caused by change in the class of work, occurring during the calendar year, shall be equalized by the Board within thirty days after the end of such year in proportion to its duration in accordance with the schedules provided in this Act.

§ 40. (i) **Deficiency.**—If, at the end of any year, it shall be seen that the contribution to the Industrial Accident Fund by any class of industry shall be less than the drain upon such fund on account of that class, the deficiency shall be made good to the fund on the first day of February of the following year by the employers of that class in proportion to their respective payments for the previous year.

§ 40. (j) **In case of death—Setting apart of amount.**—Upon the happening of an accident where death, or the nature of the injury renders the amounts of future payments certain or reasonably certain, the Board shall forthwith cause the Treasurer of the Board to set apart out of the Industrial Accident Fund a sum of money, to be calculated on the basis of the maximum sum required to pay the compensation accruing on account of such injury, which will meet such required payments not exceeding, however, the sum of Four Thousand Dollars for any one case.

§ 40. (k) **Investment of reserve.**—The Treasurer of the Board shall invest such reserve in bonds of the United States, bonds of the State of Montana, or bonds of any county, city or school district in the State of Montana, or any other security which may be approved by said Board, and out of the same and its earnings shall be paid the monthly installments, and any lump sum then or thereafter arranged for the case. Any deficiency shall be made good out of, and any balance or overplus shall revert to the Industrial Accident Fund.

§ 40. (l) **Accounts.**—The Treasurer of the Board shall keep an accurate account of all such segregations of the Industrial Accident Fund, and upon

direction of the Board shall divert from the main fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security.

§ 40. (m) **Collection of default.**—If any employer shall default in any payment to the Industrial Accident Fund, the sum due may be collected by an action at law in the name of the State, and such right of action shall be cumulative.

§ 40. (n) **Effect of default.**—For any injury happening to any of his workmen during default in any payment to the Industrial Accident Fund, the defaulting employer as to such injury shall be considered as having elected not to come under the provisions of this Act, except that he shall be and remain liable to pay to the Industrial Accident Fund the amount of such default, together with the penalty prescribed by Section 40 (g).

§ 40. (o) **Election of employé.**—The person entitled to sue under the provisions of Section 40 (n) shall have the option of proceeding by suit or taking under this Act. If such person take under this Act, the cause of action against the employer shall be assigned to the State for the benefit of the Industrial Accident Fund. If such person shall elect to proceed against the defaulting employer, such election shall constitute a waiver of any right to compensation under the provisions of this Act.

§ 40. (p) **Settlement of cause assigned to Board.**—Any cause of action assigned to the State under the preceding section may be prosecuted or compromised by the Board in its discretion.

§ 40. (q) **Application for compensation.**—Where a workman is entitled to compensation under Compensation Plan Number Three, he shall file with the Board his application therefor, together with the certificate of the physician who attended him, and it shall be the duty of such physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the Board without charge to the workman.

§ 40. (r) **Fee of physician.**—For a proper compliance with the provisions of the preceding section, the physician, after approval by the Board, shall be paid out of the Industrial Administration Fund One and One-half Dollars for each case.

§ 40. (s) **Application in case of death.**—Where death results from the injury, the parties entitled to compensation under Compensation Plan Number Three, or someone in their behalf, shall make application for the same to the Board. The application must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the rules of the Board.

§ 40. (t) **Computation of pay-roll.**—In computing the pay-roll, the entire compensation received by every workman employed in the hazardous occupations enumerated in this Act, shall be included, whether it be in the form of salary, wage, piece-work, overtime, or any allowance in the way of profit-sharing premium, or otherwise, and whether payable in money, board or otherwise.

§ 40. (u) **Disbursements from Accident Fund—Deficit.**—Disbursements out of the Industrial Accident Fund shall be made by the Treasurer

of the Board as the Board may order. If at any time there shall not be sufficient money in the Accident Fund with which to pay any warrants drawn thereon, the employer, on account of whose workmen the warrant was drawn, shall pay the same, and upon his next contribution to such fund he shall be credited with the amount so paid with interest thereon at the rate of six per centum per annum from the date of such payment to the date upon which the next assessment becomes payable, and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such fund for the excess, and if said warrant be not paid for want of funds, it shall be credited to such employer and be applied upon succeeding assessments.

§ 40. (v) **Individual profit forbidden.**—All earnings made by the Industrial Accident Fund by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of said fund, and the making of profit, either directly or indirectly, by the Treasurer of the Board, or any other person, out of the use of the Accident Fund shall constitute a felony, and on conviction thereof shall subject the person making such profit to imprisonment in the State Penitentiary for a term not exceeding two years, or a fine not exceeding Five Thousand Dollars, or both such fine and imprisonment, and the Treasurer of the Board shall be liable upon his official bond for all profits realized for any unlawful use of the said fund.

PART V.—SAFETY PROVISIONS

§ 50. (a) **Unsafe place of employment.**—No employer shall construct, maintain, or operate, or cause to be constructed, maintained, or operated any place of employment that is not safe.

§ 50. (b) **Use of safety device.**—No employé shall remove, displace, damage, destroy, or carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for protection of any employé in such employment or place of employment, or fail or neglect to do anything reasonably necessary to protect the life and safety of himself and other employés.

§ 50. (c) **Supervision of employments.**—The Board is vested with full power and jurisdiction over and shall have such supervision of every employment and place of employment in this State as may be necessary adequately to enforce and administer all laws and all lawful orders requiring such employment and place of employment to be safe and requiring the protection of the life and safety of every employé in such employment or place of employment.

§ 50. (d) **Special powers of Board.**—The Board shall have power, in addition to other powers herein granted, by general or special orders, rules or regulations, or otherwise:

1. To declare and prescribe what safety devices, safeguards, or other means or methods of protection as are well adapted to render employés and places of employment safe.

2. To fix such reasonable standards and to prescribe, modify, and enforce such reasonable orders for the adoption, installation, use, maintenance, and operation of safety devices, safeguards, and other means and methods of protection, as may be necessary for the protection of the life and safety of employés.

3. To fix and order such reasonable standards for the construction, repair and maintenance of places of employment as shall render them safe.

4. To require the performance of any act necessary for the protection of life and safety of employes.

5. To declare and prescribe the general form of industrial accident reports, the accidents to be reported and the information to be furnished in connection therewith, and the time within which such reports shall be filed. Nothing in this Act contained shall be construed to prevent the Board from requiring supplemental accident reports; provided, however, that where, by the laws of the State of Montana, the manner or method of carrying on any business, or the rules or regulations in relation thereto, or the character or kind of safety devices has been prescribed, no other or additional requirements shall be made by the Board, but it shall be the duty of the Board to see that the employer lives up to and obeys said laws.

§ 50. (e) **Hearing upon safety order.**—Upon the fixing of a time and place for the holding of a hearing for the purpose of considering and issuing a general safety order or orders, the Board shall cause a notice of such hearing to be published in one or more daily newspapers of general circulation, published and circulated in the State. No defect or inaccuracy in such notice, or in the publication thereof shall invalidate any general order issued by the Board after a hearing has been had.

§ 51. (a) **Inspection of places of employment.**—After July 1, 1915, every place of employment of a work or occupation defined by Sections 4 (a), 4 (b), 4 (c), 4 (d), 4 (e), and 5 of this Act to be hazardous, shall be inspected, at least once during each year, by an inspector or examiner appointed by the Board. Such inspection shall be for the purpose of determining the condition and operation of such places of employment, as regards the safety of employes working therein, and the use of safeguards, safety appliances, and reasonably safe tools and appliances.

§ 51. (b) **Report of inspection.**—A report of such inspection shall be filed in the office of the Board and a copy thereof given the employer.

§ 51. (c) **Certificate of inspection.**—Each place of employment inspected as provided in Section 51 (a) and found in a satisfactory condition shall receive from the Board, upon payment of the inspection fees hereinafter provided for, a certificate to that effect, which certificate must be prominently displayed, under glass, in one of the principal places of the establishment so inspected.

§ 51. (d) **Installation of safety devices.**—If, after such inspection and report, thereof, to the Board, it shall be found that any such place of employment is not constructed, maintained or operated as provided in this Act, the Board shall order the installation, use, maintenance and operation, within such reasonable time as the Board may direct, of such safety devices, safeguards, and other means and methods of protection as may be necessary to reasonably insure the safety of the workmen employed therein, subject to the provisions of Section 51 (e).

§ 51. (e) **Closing of place of employment.**—If after such inspection, the Board or any inspector or examiner thereof, shall find such place of employment in such an unsafe condition as to constitute an immediate menace to the safety of the workmen employed therein, the Board, or any inspector or examiner thereof, may order any such place of employment closed, or the

work therein to cease, until such safety devices, safeguards, and other means and methods, or changes or removals, as may be ordered by the Board, or any inspector or examiner thereof, shall have been installed, repaired, changed, or removed, and such place of employment put in such condition as will reasonably insure the safety of the workmen employed therein.

§ 52. (a) **Inspection fee.**—For each annual inspection made under the provisions of this section, the employer shall pay, at the time of such inspection, a fee of five cents for each one thousand dollars or fraction thereof of his annual pay-roll for the preceding year; provided, that no inspection fee under this section shall be less than Five Dollars.

§ 52. (b) **Fee for extra inspections.**—The fees for any subsequent or re-inspection made during any year in which an annual inspection shall have been made, shall be:

Where the annual pay-roll for the preceding year shall have been not more than Twenty-five Thousand (\$25,000.00) Dollars, Five (\$5.00) Dollars.

Where the annual pay-roll for the preceding year shall have been more than Twenty-five Thousand (\$25,000.00) Dollars, but not more than One Hundred Thousand (\$100,000.00) Dollars, Ten (\$10.00) Dollars.

Where the annual pay-roll for the preceding year shall have been more than One Hundred Thousand (\$100,000.00) Dollars but not more than Five Hundred Thousand (\$500,000.00) Dollars, Twenty (\$20.00) Dollars.

Where the annual pay-roll for the preceding year shall have been more than Five Hundred Thousand (\$500,000.00) Dollars but not more than One Million (\$1,000,000.00) Dollars, Forty (\$40.00) Dollars.

Where the annual pay-roll for the preceding year shall have been more than One Million (\$1,000,000.00) Dollars, Fifty (\$50.00) Dollars.

§ 52. (c) **Disposal of fees collected.**—All fees received by the Board for inspection, or for subsequent or re-inspection, and all fines imposed or collected for a violation of the safety provisions of this Act shall be paid monthly to the State Treasurer who shall credit such payments to the Industrial Administration Fund.

§ 53. (a) **Safety orders, when necessary.**—Whenever the Board shall find, that any employment or place of employment is not safe, or that the practice or means or methods of operation or processes employed or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of employes in such employments and places of employment, the Board shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employes in such employments and places of employment, and may in said order direct that such additions, repairs, improvements or changes be made; and such safety devices, and safeguards be furnished, provided and used as are reasonably required to render such employment or places of employment safe, in the manner and within the time specified in such order.

§ 53. (b) **Time for compliance with order.**—The Board may, upon application of any employer or other person affected thereby, grant such time as may reasonably be necessary for compliance with any order, and any person affected by such order may petition the Board for an extension of time, which the Board shall grant if it finds such an extension of time necessary.

§ 53. (c) **Summary investigation.**—Whenever the Board shall learn, or have reason to believe that any employment or place of employment is not

safe or is injurious to the welfare of any employé, it may summarily investigate the same, with or without notice or hearings, and enter and serve such order as may be necessary relative thereto.

§ 53. (d) **Obligations of employer.**—Every employer, employé and other person shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the Board, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, rule, or regulation.

§ 53. (e) **Concurrent jurisdiction.**—Nothing contained in this Act shall be construed to deprive any other public corporation, board or department of any power or jurisdiction over or relative to any place of employment; provided, that whenever the Board shall, by order, fix a standard of safety for employments or places of employment, such order shall, upon the filing by the Board of a copy thereof with the secretary or clerk of any such public corporation to which, or within whose jurisdiction it may apply, establish a minimum requirement concerning the matters covered by such order and shall be construed in connection with any local order relative to the same matter and to amend or modify any requirement in such local order not up to the standard of the order of the Board.

§ 53. (f) **Order as evidence—Presumed reasonable.**—Every order of the Board, general or special, its rules or regulations, findings or decisions shall be admissible in evidence in any prosecution for, or suit to prevent, the violation of any of the provisions of this Act, and shall be presumed to be reasonable. This presumption is, however, a rebuttable presumption.

§ 53. (g) **Investigations of cause of accidents.**—The Board may investigate the cause of all industrial accidents occurring in any employment or place of employment, or directly or indirectly arising from, or connected therewith, resulting in personal injury or death; and the Board shall have the power to make such orders or recommendations with respect to such accidents as may be just and reasonable, provided that neither the order nor the recommendation of the Board, nor any accident report filed with the Board, shall be admitted as evidence in an action for damages, or any proceeding to recover compensation, based on or arising out of such injury or death.

§ 53. (h) **Advanced rate for dangerous employments.**—If, by reason of poor or careless management, or otherwise, any place of employment be unduly dangerous, in comparison with other like places of employment, and the employer operating the same shall not have complied with the safety provisions of this Act, and such employer shall be under Compensation Plan Number Three, the Board, in addition to any other penalty provided by this Act, shall advance the rate upon such place of employment fifty per centum, and such advanced rate shall continue and be in force until such place of employment shall have ceased to be unduly dangerous in comparison with other like places of employment, and such employer shall have obtained a certificate of the inspector or examiner provided for herein.

§ 54. **Penalty for violation of safety provisions.**—Every employer, employé, or other person, who either individually or acting as an officer, agent or employé of a corporation, or other person, violates any safety provisions contained in this Act, or any part of any such provision, or who shall fail or refuse to comply with any such provision or any part thereof or who directly or indirectly, knowingly induces another so to do, is guilty of a misdemeanor.

§ 55. (a) **Inspector of mines.**—Whenever in this Act the inspection of mines is referred to, such inspection shall be made by the Inspector of Mines, or his deputy, and nothing in this Act contained shall be construed as modifying or limiting in any way the duties required to be performed by the Inspector of Mines as may be otherwise provided by law; provided, however, that the Inspector of Mines shall collect and account for the fees herein prescribed for inspection or subsequent or re-inspection.

No rule, regulation or requirement relating to the operation of mines within the State of Montana made by said Board shall be lawful or valid unless the same shall be concurred in and approved by the State Mine Inspector, and shall have been within the power of the said State Mine Inspector to make in the first instance.

§ 55. (b) **Order of inspector of mines—Filing.**—A copy of any order, direction or requirement of the Inspector of Mines shall be filed with the Board and shall thereupon become and have all the force and effect of an order of the Board, subject only to review by the court, as in this Act provided.

§ 56. **Repealing clause.**—All Acts and parts of Acts in conflict herewith are hereby repealed.

§ 57. **When Act effective.**—This Act shall be in full force and effect from and after its passage and approval.

Approved March 8, 1915.

NEBRASKA

WORKMEN'S COMPENSATION LAW OF 1913

Section

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WORKMEN'S COMPENSATION LAW OF 1913

(Laws 1913, c. 198.)

A Bill for an Act prescribing the liability of an employer to make compensation for injuries received by an employé in the course of employment. Modifying common law and statutory remedies, in such cases. Establishing an elective schedule of compensation. Regulating procedure for the determination of liability and providing methods for payments of compensation thereunder. Repealing all acts and parts of acts in conflict herewith.

Be it Enacted by the People of the State of Nebraska:

PART I

COMPENSATION BY ACTION AT LAW—MODIFICATION OF REMEDIES

§ 1. **Compensation provided—Wilful negligence.**—When personal injury is caused to an employé by accident arising out of and in the course of his employment, of which the actual or lawful imputed negligence of the employer is the natural and proximate cause, he shall receive compensation therefor from his employer, provided the employé was himself not wilfully negligent at the time of receiving such injury, and the question of whether the employé was wilfully negligent shall be one of fact to be submitted to the jury, subject to the usual powers of the court over verdicts rendered contrary to the evidence, or to law.

§ 2. **Abolition of defenses.**—In all cases brought under Part I of this act it shall not be a defense (a) that the employé was negligent, unless and except it shall also appear that such negligence was wilful, or that the employé was in a state of intoxication; (b) that the injury was caused by the negligence of a fellow employé; (c) that the employé had assumed the risks inherent in, or incidental to, or arising from the failure of the employer to provide and maintain safe premises and suitable appliances, which grounds of defense are hereby abolished, except as provided in Section 4.

§ 3. **Same.**—If an employer subject to the provisions of this act as shown in Section 6 elects not to come under Part II hereof, he loses the right to interpose the three defenses above stated in any action brought against him for personal injury or death of an employé.

§ 4. **Defenses where employé not under Act.**—If an employer becomes subject to Part II of this act, and the employé does not, then the defenses existing under the laws of Nebraska, other than the provisions of this act, at the time of the personal injury or death of the employé shall be available to the employer in any action brought by the employé or his dependents for personal injury or death.

§ 5. **Application to claim for wrongful death.**—The provisions of Sections 1, 2, 3 and 4 shall apply to any claim for the death of any employé arising under Chapter 21 of the Compiled Statutes of Nebraska, 1911, and the acts or parts of acts amendatory thereof, concerning death by wrongful act.

§ 6. **Who are employers within Act.**—(1) The provisions of this act shall apply to the State of Nebraska and every governmental agency created by it, and every employer in this state employing five or more employés, in the regular trade, business, profession or vocation of such employer.

(2) The following are declared not to be hazardous occupations and not within the provisions of this act; employers of household domestic servants, employers of farm laborers and all employers employing less than five employés, in the regular trade, business, profession or vocation of such employer. Railroad companies engaged in interstate or foreign commerce are declared subject to the powers of Congress and not within the provisions of this act.

(3) Any employer not included in the preceding paragraphs of this section and the employés of such employer may, by their joint election, filed with the Insurance Commissioner, accept the provisions of Part II of this act, and such acceptances shall subject them to the said provisions of Part II hereof to all intents and purposes as if they had been originally included in the terms of Subdivision 2 of this section; Provided, however, that either such employer or workmen (prior to accident) shall have the right to waive such election to come under Part II hereof, the procedure being the same as indicated in Subdivisions (a) and (b) of Section 12.

§ 7. **Burden of proof—Wilful negligence.**—In all actions at law brought pursuant to Part I of this act, the burden of proof to establish wilful negligence of the injured employé shall be on the defendant.

§ 8. **Approval of claim for legal services or disbursements.**—No claim or agreement for legal services or disbursements in support of any demand made or suit brought under the provisions of this act shall be an enforceable lien against the amounts to be paid as damages or compensation or be valid or binding in any other respect, unless the same be approved in writing by the judge presiding at the trial, or in case of settlement without trial, by the judge of the District Court of the district in which such issue arose. After such approval, if notice in writing be given the defendant of such claim or agreement for legal services and disbursements, the same shall be a lien against any amount thereafter to be paid as damages or compensation. Provided, however, that where the employé's compensation is payable by the employer in periodical installments, the court shall fix, at the time of approval, the proportion of each installment to be paid on account of legal services and disbursements.

PART II

ELECTIVE COMPENSATION

§ 9. **Where both employer and employé subject to Act.**—If both employer and employé become subject to Part II of this act, both shall be bound by the schedule of compensation herein provided, which compensation shall be paid in every case of injury or death caused by accident arising out of and in the course of employment, except accidents caused by, or resulting in any degree from wilful negligence, as hereinafter defined, of the employé.

§ 10. **Liability without fault.**—When employer and employé shall by agreement, express or implied, or otherwise as hereinafter provided, accept the provisions of Part II of this act, compensation shall be made for personal injuries to or for the death of such employé by accident arising out of and in the course of his employment, without regard to the negligence of the employer, according to the schedule hereinafter provided, in all cases except when the injury or death is caused by wilful negligence on the part of the employé; and the burden of proof of such fact shall be upon the employer.

§ 11. Exclusive remedy.—Such agreement or the election hereinafter provided for shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in Part II of this act, and an acceptance of all the provisions of Part II of this act, and shall bind the employé himself, and for compensation for his death shall bind his legal representatives, his widow and next of kin, as well as the employer and the legal representatives of a deceased employer, and those conducting the business of the employer, and those conducting the business of the employer during bankruptcy or insolvency.

§ 12. Method of election.—In the occupations described in Section 6 hereof, and all contracts of employment made after the taking effect of this act shall be presumed to have been made with reference, and subject to the provisions of Part II hereof unless otherwise expressly stated in the contract, or unless written or printed notice has been given by either party to the other, as hereinafter provided, that he does not accept the provisions of Part II. Every such employer and every employé is presumed to accept and come under Part II hereof, unless prior to accident he shall signify his election not to accept or be bound by the provisions of Part II. This election not to accept Part II shall be by notice as follows:

(a) The employer shall post and thereafter keep continuously posted in a conspicuous place about the place or places where his workmen are employed a written or printed notice of his election not to be bound by Part II hereof, and shall file a duplicate thereof with the Insurance Commissioner.

(b) The employé shall give written or printed notice to the employer of his election not to be bound by Part II and shall file a duplicate with proof of service attached thereto with the Insurance Commissioner.

§ 13. Waiver of election.—An employer who has given notice of his election not to accept or be bound by the provisions of Part II hereof, may waive such election at any time, by posting about the place or places where his workmen are employed a written or printed notice setting forth a withdrawal of his previous election not to be bound by the provisions of Part II. A duplicate of such notice with proof of such posting attached thereto shall be filed with the Insurance Commissioner. An employé who has given written or printed notice to his employer that he elects not to be subject to the provisions of Part II hereof, may waive such election at any time prior to the happening of an accident resulting in personal injuries to said employé, by a notice in writing directed to the employer and served upon the employer or his agent. A duplicate of such notice with proof of service attached thereto shall be filed with the Insurance Commissioner. The waivers referred to in the preceding paragraphs of this section shall not become effective until noon of the fifth day after filing the required notice with the Insurance Commissioner.

§ 14. Employer defined.—The following shall constitute employers subject to the provisions of this act:

(1) The State and every governmental agency created by it.

(2) Every person, firm or corporation, including any public service corporation, who is engaged in any trade, occupation, business or profession as described in Section 6, and who has any person in service under any contract of hire, express or implied, oral or written, and who prior to the time

of the accident to the employé for which compensation under this act may be claimed, shall not, in the manner provided in Section 12, have elected not to become subject to the provisions of Part II of this act.

§ 15. Employé defined.—The terms "employé" and "workman" are used interchangeably and have the same meaning throughout this act; the said terms include the plural and all ages and both sexes, and shall be construed to mean:

(1) Every person in the service of the State or of any governmental agency created by it, under any appointment or contract of hire, express or implied, oral or written, but shall not include any official of the State, or of any governmental agency created by it, who shall have been elected or appointed for a regular term of office, or to complete the unexpired portion of any regular term.

(2) Every person in the service of any employer who is engaged in any trade, occupation, business or profession as described in Section 6, under any contract of hire, express or implied, oral or written, including aliens and also including minors who are legally permitted to work under the laws of the State, who for the purpose of making election of remedies under this Code shall have the same power of contracting and electing as adult employés.

(3) It shall not be construed to include any person whose employment is casual, or not for the purpose of gain or profit by the employer, or which is not in the usual course of the trade, business, profession or occupation of his employer. The term "casual" shall be construed to mean "Occasional; coming at certain times without regularity, in distinction from stated or regular."

(4) It shall not be construed to include any person to whom articles and materials are given to be made up, cleaned, washed, finished, repaired or adapted for sale in the worker's own home or on other premises not under the control or management of the employer, unless the employé is required to perform the work at a place designated by the employer.

THIRD PERSONS' RIGHTS AND LIABILITIES

§ 16. Third party liability.—Any person, firm or corporation creating or carrying into operation any scheme, artifice or device to enable him, them or it to execute work without being responsible to the workmen for the provisions of this act shall be included in the term "employer" and with the immediate employer shall be jointly and severally liable to pay the compensation herein provided for and be subject to all the provisions of this act. This section, however, shall not be so construed as to cover or mean an owner who lets a contract to a contractor in good faith, or a contractor who, in good faith, lets to a sub-contractor a portion of his contract, if the owner or principal contractor, as the case may be, requires the contractor or sub-contractor, respectively, to procure a policy or policies of insurance from an insurance company licensed to make such insurance in this state, which policy or policies of insurance shall guarantee payment of compensation according to this act to injured workmen.

§ 17. Earnings at time of injury as basis for compensation.—Where compensation is claimed from, or proceedings taken against a person, firm or corporation under the foregoing section, the compensation shall be calculated with reference to the wage the workman was receiving from the person by whom he was immediately employed at the time of the injury.

§ 18. Subrogation.—Where a third person is liable to the employé or to the dependents, for the injury or death, the employer shall be subrogated to the right of the employé or to the dependents against such third person, and the recovery by such employer shall not be limited to the amount payable as compensation to such employé or dependents, but such employer may recover any amount which such employé or his dependents would have been entitled to recover. Any recovery by the employer against such third person, in excess of the compensation paid by the employer after deducting the expenses of making such recovery, shall be paid forthwith to the employé or to the dependents, and shall be treated as an advance payment by the employer, on account of any future installments of compensation.

SCHEDULE OF COMPENSATION

§ 19. Waiting period.—No compensation shall be allowed for the first fourteen days after disability begins, except as provided in Section 20, but if disability extends beyond the period of fourteen days, compensation shall begin on the fifteenth day after the injury; Provided, however, that if such disability continues for eight weeks or longer, such compensation shall be computed from the date of the injury.

§ 20. Medical and hospital services.—During the first twenty-one days after disability begins the employer shall be liable for reasonable medical and hospital services and medicines as and when needed, not however to exceed two hundred dollars in value, unless the employé refuses to allow them to be furnished by the employer; Provided, however, that where the injured employé refuses or neglects to avail himself of such medical or surgical treatment, the employer shall not be liable for any aggravation of such injury due to said neglect or refusal.

§ 21. Schedule.—The following schedule of compensation is hereby established for injuries resulting in disability:

(1) For the first three hundred weeks of total disability the compensation shall be fifty per centum of the wages received at the time of injury, but such compensation shall not be more than ten dollars per week or less than five dollars per week; Provided, that, if at the time of injury the employé receives wages of less than five dollars per week, then he shall receive the full amount of such wages per week as compensation. After the first three hundred weeks of total disability, for the remainder of the life of the employé, he shall receive forty per centum of the wages received at the time of the injury, but the compensation shall not be more than eight dollars per week nor less than four dollars per week; Provided, that, if at the time of the injury the employé receives wages of less than four dollars per week then he shall receive the full amount of such wages as compensation. Nothing in this subdivision shall require the payment of compensation after disability shall cease. Should partial disability be followed by total disability, the period of three hundred weeks mentioned in this subdivision of this section shall be reduced by the number of weeks during which compensation was paid for such partial disability.

(2) For disability partial in character (except the particular cases mentioned in Subdivision 3 of this section), the compensation shall be fifty per centum of the difference between the wages received at the time of injury and the earning power of the employé thereafter, but such compensation

shall not be more than ten dollars per week. This compensation shall be paid during the period of such partial disability; not, however, beyond three hundred weeks after the date of the accident causing the disability. Should total disability be followed by partial disability, the period of three hundred weeks mentioned in this subdivision shall be reduced by the number of weeks during which compensation was paid for such total disability.

(3) For all disability resulting from permanent injury of the following classes, the compensation shall be exclusively as follows:

For the loss of a hand, fifty per centum of the wages during one hundred and seventy-five weeks;

For the loss of an arm, fifty per centum of wages during two hundred and fifteen weeks;

For the loss of a foot, fifty per centum of wages during one hundred and fifty weeks;

For the loss of a leg, fifty per centum of wages during two hundred and fifteen weeks;

For the loss of an eye, fifty per centum of wages during one hundred and twenty-five weeks;

For the loss of any two or more of such members, not constituting total disability, fifty per centum of wages during the aggregate of the periods specified for each.

The loss of both hands or both arms, or both feet, or both legs, or both eyes shall constitute total disability, to be compensated according to the provisions of Subdivision 1 of this section.

Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm, and amputation at or above the knee shall be considered as the loss of a leg. Permanent loss of the use of a hand, arm, foot, leg or eye shall be considered as the equivalent of the loss of such hand, arm, foot, leg or eye. Compensation under this subdivision shall not be more than ten dollars per week nor less than five dollars per week; Provided, that, if at the time of injury the employé receives wages of less than five dollars per week, then he shall receive the full amount of such wages per week as compensation.

§ 22. Compensation in case of death.—(1) If death results from the injuries and the deceased employé leaves one or more dependents wholly dependent upon his earnings for support at the time of the accident causing the injury, the compensation, subject to the provisions of Section 23, shall be fifty per centum of the wages received at the time of injury, but the compensation shall not be more than ten dollars per week nor less than five dollars per week; Provided, that, if at the time of injury the employé receives wages of less than five dollars per week, then the compensation shall be the full amount of such wages per week. This compensation shall be paid during dependency, not exceeding three hundred and fifty weeks from the date of the accident causing the injury.

(2) If the deceased employé leaves no dependents wholly dependent upon his earnings for support at the time of the accident causing the injury, but leaves one or more dependents only partly dependent upon his earnings for support at said time, the compensation shall be the same proportion of the

benefits provided in Subdivision 1 of this section for persons wholly dependent as the average amount of the wage regularly contributed by the deceased to such partial dependents at, and for a reasonable time immediately prior to the injury bears to the total wage of the deceased, during the same time.

(3) Upon the death of an employé, resulting through personal injuries as herein defined, whether or not there be dependents entitled to compensation, the reasonable expenses of the last sickness and burial, not exceeding one hundred dollars, without deduction of any amount theretofore paid for compensation or for medical expenses, shall be paid to his dependents, or if there be no dependent, then to the personal representatives of the deceased.

(4) Compensation under this act to alien dependents, widows, children and parents not residents of the United States, shall be the same in amount as is provided in each case for residents, except that at any time within one year after the death of the injured employé, the employer may, at his option, commute all future installments of compensation to be paid to such alien dependents by paying to them two-thirds of the total amount of such future installments of compensation. Alien widowers, brothers and sisters not residents of the United States shall not be entitled to any compensation.

(5) The consul-general, consul, vice-consul-general, or vice-consul, of the nation which the employé, whose injury results in death, is a citizen, or the representative of such consul-general, consul, vice-consul-general, or vice-consul, residing within the State of Nebraska, shall be regarded as the sole legal representative of any alien dependents of the employé, residing outside of the United States, and representing the nationality of the employé. Such consular officer or his representative, residing in the State of Nebraska, shall have in behalf of such non-resident dependents, the exclusive right to adjust and settle all claims for compensation provided by this act and to receive for distribution to such non-residents alien dependents all compensation arising hereunder.

§ 23. Death of employé receiving disability compensation.—The death of an injured employé prior to the expiration of the period within which he would receive such disability payment, shall be deemed to end such disability, and all liability for the remainder of such payment which he would have received in case he had lived shall be terminated, but the employer shall thereupon be liable for the following death benefit in lieu of any further disability indemnity. If the injury so received by such employé was the cause of his death, and such deceased employé leaves dependents as hereinbefore specified, wholly or partially dependent on him for support, the death benefit shall be a sum sufficient, when added to the indemnity which shall at the time of death have been paid or become payable under the provisions of this act to such deceased employé, to make the total compensation for the injury and death equal to the full amount which such dependents would have been entitled to receive under the provisions of Section 22 hereof in case the accident had resulted in immediate death, and such benefit shall be payable in the same manner and subject to the same terms and conditions in all respects as payments made under the provisions of said Section 22. No deduction shall be made for the amount which may have been paid for medical and hospital services and medicines or for the expenses of the last sickness or burial. If the employé die from some cause other than the in-

jury, there shall be no liability for compensation to accrue after his death.

§ 24. Dependents.—The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employé:

- (a) A wife upon a husband with whom she is living at the time of his death;
- (b) A husband upon a wife with whom he is living at the time of her death;
- (c) A child or children under the age of sixteen years (or over said age, if physically or mentally incapacitated from earning) upon the parent with whom he is or they are living at the time of death of such parent, there being no surviving parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them;

(d) Compensation shall be payable under Sections 22 and 23 to or on account of any child, brother or sister, only if and while such child, brother or sister, is under the age of sixteen. No compensation shall be payable under said sections to a widow, unless she was living with her deceased husband at the time of his death; provided, that a wife or a husband living in a state of abandonment for more than two years at the time of the injury, or subsequently, shall not be a beneficiary under this act. The terms "child" and "children" shall include step-children and adopted children if members of the decedent's household at the time of his death, and shall include post-humous children. If the compensation payable under said sections to any person shall for any cause cease, the compensation to the remaining persons entitled thereunder shall thereafter be the same as would have been payable to them had they been the only persons entitled to compensation at the time of the death of the deceased. If a widow or widower of a deceased employé shall remarry, then the compensation benefits shall become payable to the child or children of such widow or widower, if there be any such child or children; but if there be no such child or children of such dependent widow or widower, [the rights of such widow or widower] shall not be affected by such remarriage;

(e) In all other cases, questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof; if there is no one wholly dependent and more than one person partly dependent, the death benefit shall be divided among them according to the relative extent of their dependency;

(f) No person shall be considered a dependent, unless he or she be a member of the family of the deceased employé, or bears to him the relation of widow or widower, or lineal descendant, or ancestor, or brother, or sister;

(g) Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the accident to the employé, and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto, or their legal guardians or trustees. No dependent of an injured employé shall be deemed, during the life of such employé, a party in interest to any proceeding by him for the enforcement of collection of any claim for compensation, nor as respects the compromise thereof by such employé.

§ 25. Method of payment.—Except as hereinafter provided, all amounts of compensation payable under the provisions of this act shall be payable periodically in accordance with the method of payment of the wages of the employé at the time of his injury or death.

§ 26. Computation of earnings.—Wherever in this act the term “wages” is used, it shall be construed to mean the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, and shall not include gratuities received from the employer or others, nor shall it include board, lodging or similar advantages, received from the employer, unless the money value of such advantages shall have been fixed by the parties at the time of hiring. In occupations involving seasonable employment or employments dependent upon the weather, the employé's weekly wages shall be taken to be one-fiftieth of the total wages which he has earned from all occupations during the year immediately preceding the accident, unless it be shown that during such year, by reason of exceptional causes, such method of computation does not ascertain fairly the earnings of the employé, in which case the period for calculation shall be extended so far as to give a basis for the fair ascertainment of his average weekly earnings. In continuous employments, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the employé, his weekly wages shall be taken to be five and one-half times his average earnings at such rate for a working day of ordinary length, excluding earnings from overtime and using as the basis of calculation his earnings during so much of the preceding six months as he worked for the same employer.

§ 27. Willful negligence.—If the employé is injured by reason of his intentional wilful negligence, or by reason of being in a state of intoxication, neither he nor his beneficiaries shall receive any compensation under the provisions of this act.

§ 28. Previous disability made total by accident.—If an employé receives an injury, which, of itself, would only cause partial disability, but which, combined with a previous disability, does in fact cause total disability, the employer shall only be liable as for the partial disability, so far as the subsequent injury is concerned.

§ 29. Liability of joint employers.—In case any employé for whose injury or death compensation is payable under this act shall, at the time of the injury, be employed and paid jointly by two or more employers subject to this act, such employers shall contribute to the payment of such compensation in proportion to their several wage liabilities to such employé. If one or more, but not all of such employers should be subject to the provisions of Part II of this act, then the liability of such of them as are so subject shall be to pay that proportion of the entire compensation which their proportionate wage liability bears to the entire wages of the employé; Provided, however, that nothing in this section shall prevent any arrangement between employers for a different distribution between themselves of the ultimate burden of compensation.

§ 30. Contributions by employé.—No savings or insurance of the injured employé, or any contribution made by him to any benefit fund or protective association independent of this act shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any other source than those paid or caused to be paid by the employer as herein provided, be considered in fixing the compensation under this act.

§ 31. No waiver of rights.—No agreement by an employé to waive his rights to compensation under this act shall be valid.

§ 32. **Minor or incompetent employés.**—If an injured employé is mentally incompetent or is a minor at the time when any right or privilege accrues to him under this act, his guardian or next friend may, in his behalf, claim and exercise such right or privilege.

§ 33. **Notice of injury.**—No proceedings for compensation for an injury under this act shall be maintained, unless a notice of the injury shall have been given to the employer as soon as practicable after the happening thereto, and unless the claim for compensation with respect to such injury shall have been made within six months after the occurrence of the same, or, in case of the death of the employé, or in the event of his physical or mental incapacity within six months after death or the removal of such physical or mental incapacity.

The said notice shall be in writing, and shall state in ordinary language the time, place and cause of the injury; and shall be signed by the person injured, or by a person in his behalf, or, in the event of his death, by his legal representative or by a person in his behalf.

The notice shall be served upon the employer or an agent thereof. Such service may be made by delivering said notice to the person on whom it is to be served or leaving it at his residence or place of business, or by sending it by registered mail addressed to the person or corporation on whom it is to be served at his last known residence or place of business.

A notice given under the provisions of this section shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place or cause of the injury, unless it is shown that it was the intention to mislead, and the employer, or the insurance company carrying such risk, as the case may be, was in fact misled thereby. Want of such written notice shall not be a bar to proceedings under this act, if it be shown that the employer had notice or knowledge of the injury.

EXAMINATION AND VERIFICATION OF INJURY

§ 34. **Medical examination.**—After an employé has given notice of an injury as provided in Section 33, and from time to time thereafter during the continuance of his disability, he shall, if so requested by the employer or the insurance company carrying such risk, submit himself to an examination by a physician or surgeon legally authorized to practice medicine under the laws of the State, furnished and paid for by the employer, or the insurance company carrying such risk, as the case may be. The employé shall have the right to have a physician provided and paid for by himself present at the examination. The refusal of the employé to submit to such examination shall deprive him of the right to compensation under this act during the continuance of such refusal and the period of such refusal shall be deducted from the period during which compensation would otherwise be payable.

§ 35. **Autopsy.**—In all death claims, where the cause of death is obscure or disputed, any interested party may require an autopsy, the cost of such autopsy to be borne by the party demanding the same.

SETTLEMENT AND PAYMENT OF COMPENSATION

§ 36. **Settlement by agreement.**—The interested parties shall have the right to settle all matters of compensation between themselves in accordance with the provisions of this act.

§ 37. Settlement of controversies.—In case of a dispute over, or failure to agree upon a claim for compensation between employer and employé, or the dependents of the employé, the claim may be submitted to arbitration in such manner or method as may be mutually agreed upon, or either party may submit the claim, both as to the question of fact, the nature and effect of the injuries, and the amount of compensation therefor, according to the schedule herein provided, to the District Court of the county which would have jurisdiction of a civil action between the parties, which court shall have authority to hear and determine the cause as a suit in equity and enter final judgment therein determining all questions of law and fact in accordance with the provisions of this act, which judgment shall be final and conclusive unless reversed or modified on appeal or otherwise modified pursuant to the provisions of this act.

§ 38. Limitations.—In case of personal injury, all claim for compensation shall be forever barred unless, within one year after the accident, the parties shall have agreed upon the compensation payable under this act, or unless, within one year after the accident, one of the parties shall have filed a petition as provided in Section 39 hereof. In case of death, all claims for compensation shall be forever barred unless, within one year after the death, the parties shall have agreed upon the compensation under this act, or unless within one year after the death, one of the parties shall have filed a petition as provided in Section 39 hereof. Where, however, payments of compensation have been made in any case, said limitation shall not take effect until the expiration of one year from the time of the making of the last payment.

§ 39. Procedure—Petition and answer—Appeal.—Procedure in cases of dispute shall be as follows: Either party may file in the District Court a verified petition setting forth the names and residences of the parties and the facts relating to the employment at the time of the injury, the injury in its extent and character, the amount of wages being received at the time of injury, the knowledge of or notice to the employer of the occurrence of said injury and such other facts as may be necessary for the information of the court, and also stating the matter or matters in dispute and the contention of the petitioner with reference thereto.

Upon the filing of such petition a summons shall issue and be served upon the adverse party, as in civil causes, together with a copy of the petition. Return of service shall be made within four days from the issuance of the summons. Within seven days after the return day of such summons the party upon whom the same is served shall file an answer to said petition, which shall admit or deny the substantial averments of the petition, and shall state the contention of the defendant with reference to the matters in dispute, as disclosed by the petition. The answer shall be verified in like manner as required for a petition. At the expiration of the time fixed for filing answers the court shall proceed to hear and determine the cause without delay and shall render judgment thereon according to the form of law. Any appeal from such judgment shall be prosecuted in accordance with the general laws of the state regulating appeals and actions at law except that such appeal shall be perfected within thirty days from the entry of the judgment and the cause shall be advanced for hearing in the Supreme Court so as to bring said cause on for argument before such court within sixty days from the filing of the appeal and said Supreme Court shall render its judgment and opinion in such cases within thirty days after submission.

§ 40. **Lump sum payments.**—The amounts of compensation payable periodically under the law, either by agreement of the parties, or by decision of the court, may be commuted to one or more lump sum payments, except compensation due for death and permanent disability. These may be commuted only with the consent of the District Court.

§ 41. **Final settlements.**—All settlements by agreement of the parties and all awards of compensation made by the court, except those amounts payable periodically for six months or more, shall be final and not subject to readjustment.

§ 42. **Modification of agreement or award.**—All amounts paid by an employer or by an insurance company carrying such risk, as the case may be, and received by the employé or his dependents, by lump sum payments, shall be final, but the amount of any agreement or award payable periodically for more than six months may be modified as follows:

(a) At any time by agreement of the parties.

(b) If the parties cannot agree, then at any time after six months from the date of the agreement or award, an application may be made to the court by either party on the ground of increase or decrease or incapacity due solely to the injury, or that the condition of a dependent has changed as to age or marriage, or by reason of the death of a dependent. In such case the same procedure shall be followed as in Section 39 in case of disputed claim for compensation.

§ 43. **Payment to trustee.**—At any time after the amount of any award has been agreed upon by the parties, or found and ordered by the court, a sum equal to the present value of all future installments of compensation may (where death or the nature of the injury renders the amount of future payments certain) by leave of court, be paid by the employer, or by the insurance company carrying such risk, as the case may be, to any savings bank or trust company of this state, in good standing, and such sum together with all interest thereon, shall thereafter be held in trust for the employé or the dependents of the employé, who shall have no further recourse against the employer. The payment of such sum by the employer, evidenced by the receipt of the trustee to be filed with the Insurance Commissioner, shall operate as a satisfaction of said awards as to the employer. Payments from said fund shall be made by the trustee in the same amounts and at the same time as are herein required of the employer until said fund and interest shall be exhausted. In the appointment of the trustee, preference shall be given, in the discretion of the court, to the choice of the injured employé or the dependents of the deceased employé, as the case may be.

§ 44. **To whom paid where no administrator.**—In case of death, where no executor or administrator is qualified, the said court shall, by order, direct payment to be made to such persons as would be appointed administrator of the estate of such decedent upon like terms as to bond for the proper application of compensation payments as are required of administrators.

§ 45. **Reports of accidents and settlements.**—Report of all settlements and releases shall be filed by the employer with the Labor Commissioner within sixty days after such settlements are made. The said reports shall contain the name and nature of the business of the employer, the location of his establishment or place of work, the name, age, sex, and occupation of the injured employé, and shall state the time, the nature and cause of the injury, and such other information as may be required by the Labor Commissioner.

Any employer who refuses or neglects to make the report required by this section shall be punished by a fine of not more than fifty dollars for each offense. If the injury shall result in the death of the employé such report shall show whether the deceased was a citizen of the United States, or an alien; in the event that the deceased was an alien, such report shall show his nationality, and so far as may be known, his place of birth, parentage and names and addresses of dependents. If, as a result of the injury, the death of the employé occurs subsequent to the making of such report it shall be the duty of the employer to make supplemental reports giving the same information as if the injury had caused the immediate death of the employé.

When an injury results in the death of an employé who is a citizen or subject of a foreign country, the Labor Commissioner shall, after such death has been reported to him, at once notify the superior consular officer of the country of which the employé at the time of his death, was a citizen or subject, and whose consular district embraces the State of Nebraska, or the representative, residing in the State of Nebraska, of such consular officer, whom he shall have formally designated as his representative by a communication in writing to the Labor Commissioner. Such notification shall contain in addition to the name of the employé, such further information as the Labor Commissioner may possess respecting the place of birth, parentage, and names and addresses of the dependents of the employé.

§ 46. Insurance.—An employer who is liable for compensation as provided in this act may insure the liability to pay such compensation in any liability insurance company or companies licensed to write such risks in the State of Nebraska, or in any mutual insurance association authorized under the laws of the State of Nebraska to assume such risks.

§ 47. Insurance policies—Requisites.—No policy of insurance against liability under this act shall be made unless the same shall cover the entire liability of the employer thereunder and shall contain an agreement by the insurer that, in case the employer shall be or become insolvent, or in case an execution upon a judgment for compensation is returned unsatisfied, an employé of such employer or dependents of a deceased employé who shall be entitled to compensation under this act may enforce their claim or claims to compensation against the insurer to the same extent that the employer could have enforced his claim against such insurer had he paid compensation. No suit shall be maintained for the collection of premiums upon any such policy of insurance, unless such covenant is contained in said policy. Such covenant shall be unaffected by any default of the insured in the payment of premiums and shall be construed to be a direct promise to such injured employé and dependents, and shall be enforceable by action brought in the name of such injured employé or in the names of such dependents. Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and provisions thereof inconsistent with this act shall be void. No company or association shall enter into any such contract for insurance unless such insurer shall have been approved by the State Insurance Commissioner as provided by law.

§ 48. Existing liability insurance contracts.—Nothing herein shall affect any existing contract for employers' liability insurance, or affect the organization of any mutual or other insurance company, or any arrangement now existing between employers and employés, providing for the payment to

such employes, their families, dependents or representatives, sick, accident or death benefits in addition to the compensation provided for by this act; but liability for compensation under this act shall not be reduced or affected by any insurance of the injured employe, or any contribution or other benefit whatsoever, due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer, and in addition thereto, the right to enforce in his own name in the manner provided in Section 47 the liability of any insurer who may, in whole or in part, have insured the liability for such compensation; Provided, however, that payment in whole or in part of such compensation by either the employer, or the insurer, as the case may be, shall, to the extent thereof, be a bar to recovery against the other, of the amount so paid.

PART III

MISCELLANEOUS PROVISIONS

§ 49. Release of employer.—If any employe, or his dependents in case of death, of any employer subject to the provisions of Part II of this act files any claim with, or accepts any payment from such employer, or from any insurance company carrying such risk, on account of personal injury, or makes any agreement, or submits any question to the court under Part II of this act, such action shall constitute a release to such employer of all claims or demands at law, if any, arising from such injury.

§ 50. Assignment and exemption of compensation payments.—No payment under this act shall be assignable or subject to attachment or garnishment, or be held liable in any way for any debts, except as provided in Section 8 hereof.

§ 51. Preference.—The right to compensation and all compensation awarded to any injured employe or for death claims to his dependents (without limit or amount), shall have the same preference against the assets of the employer as unpaid wages for labor, but such compensation shall not become a lien on the property of third persons by reason of such preference.

WORDS AND PHRASES DEFINED

§ 52. Definitions.—Throughout this act, the following words and phrases as used therein shall be considered to have the following meaning respectively, unless the context shall clearly indicate a different meaning in the construction used:

(a) The term "Physician" shall include "Surgeon," and in either case shall mean one legally authorized to practice his profession within the State of Nebraska, and in good standing in his profession at the time.

(b) The word "Accident," as used in this act shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen event happening suddenly and violently, with or without human fault and producing at the time objective symptoms of an injury.

The terms "Injury" and "Personal injuries" shall mean only violence to the physical structure of the body and such disease or infection as naturally results therefrom. The said terms shall in no case be construed to include occupational diseases in any form, or any contagious or infectious disease con-

tracted during the course of employment, or death due to natural causes but occurring while the workman is at work.

"Death" when mentioned as a basis for the right to compensation means only death resulting from such violence and its resultant effects occurring within three hundred and fifty weeks after the accident.

(c) Personal Injuries, Etc.—Without otherwise affecting either the meaning or interpretation of the abridged clause, "Personal injuries arising out of and in the course of employment," it is hereby declared:

Not to cover workmen except while engaged in, on or about the premises where their duties are being performed, or where their services requires their presence as a part of such services at the time of the injury, and during the hours of service as such workmen.

(d) Wilful Negligence.—For the purposes of this act, wilful negligence shall consist of (1) deliberate act, or (2) such conduct as evidences reckless indifference to safety, or (3) intoxication at the time of the injury.

(e) Whenever in this act the singular is used, the plural shall be included; where the masculine gender is used, the feminine shall be included.

(f) The designation "State Insurance Commissioner" or "Insurance Commissioner" as used herein is intended to mean the State official who has charge of the Insurance Department of the State of Nebraska.

(g) The "court" as used herein shall mean the District Court which would have jurisdiction in an ordinary civil case involving a claim for the injuries or death in question, and the "judge" shall mean a judge of said court.

§ 53. **Rights of action preserved.**—Every right of action for death by wrongful act, or for injury by negligence, accruing to an injured employé prior to the taking effect of this act is continued and preserved under the existing law.

§ 54. **Limitations of time in event of unconstitutionality.**—If the provisions of this act relating to the compensation for injuries to or death of workmen shall be repealed or adjudged invalid or unconstitutional, the period intervening between the occurrence of an injury or death and such repeal, or the final adjudication of invalidity, shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death, but the amount of any compensation which may have been paid for any such injury shall be deducted from any judgment for damages recovered on account of such injury.

§ 55. **Validity of sections independent.**—In case for any reason any paragraph or any provision of this act shall be questioned in any court and shall be held to be unconstitutional or invalid, the same shall not be held to affect any other paragraph or provision of this act, except that Parts I and II are hereby declared to be inseparable, and if either part be declared void or inoperative in an essential part, so that the whole of such part must fall, the other part shall fall with it and not stand alone. Part I of this act shall not apply in cases where Part II becomes operative in accordance with the provisions thereof, but shall apply in all other cases when the employer is subject to the provisions of this act and in such cases shall be in extension or modification of the common law.

§ 56. **Repealing clause.**—All acts or parts of acts inconsistent with this act are to be deemed replaced by this act and to that end are hereby repealed.

§ 57. **Name of Act.**—This act shall be known as the "Workmen's Compensation Law of 1913."

NEVADA

INDUSTRIAL INSURANCE ACT

Section

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44. Validity of Act.
45. Limitations in case of invalidity.
46. Distribution of fund in case of repeal.
47. Retroactive.
48. When effective.
49. Repealing clause.

NEVADA INDUSTRIAL INSURANCE ACT

(*St. 1913, p. 137, c. 111, amended by St. 1915, p. 279, c. 190.*)

An Act relating to the compensation of injured workmen in the industries of this state and the compensation to their dependents where such injuries result in death, creating an industrial insurance commission, providing for the creation and disbursement of funds for the compensation and care of workmen injured in the course of employment, and defining and regulating the liability of employers to their employees; and repealing all acts and parts of acts in conflict with this act.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

§ 1. **Election of compensation—Abolition of defenses.**—(a) Except as by this act otherwise provided, it shall be conclusively presumed that every employer, as defined by this act, has elected to provide, secure, and pay compensation according to the terms, conditions, and provisions of this act for any and all personal injuries by accident sustained by an employee arising out of and in the course of the employment; and in such cases the employer,

shall be relieved from other liability for recovery of damages or other compensation for such personal injury unless by the terms of this act otherwise provided.

(b) Where the state, county, municipal corporation, school district, cities under special charter and commission form of government, or contractors under the state, county, municipal corporation, school district, or cities under special charter or commission form of government is the employer, the terms, conditions and provisions of this act for the payment of compensation and amount thereof for such injury sustained by an employee of such employer shall be exclusive, compulsory, and obligatory upon both employer and employee.

(c) If an employer having the right under the provisions of this act to elect to reject the terms, conditions, and provisions thereof, and in such case exercises the right in the manner and form by this act provided, such employer shall not escape liability for personal injury sustained by an employee of such employer when the injury sustained arises out of and in the usual course of the employment, because:

(1) The employee assumed the risks inherent or incidental to, or arising out of, his or her employment; or the risks arising from the failure of the employer to provide and maintain a reasonably safe place to work, or the risks arising from the failure of the employer to furnish reasonably safe tools or appliances, or because the employer exercised reasonable care in selecting reasonably competent employees in the business;

(2) That the injury was caused by the negligence of a coemployee;

(3) That the employee was negligent, unless and except it shall appear that such negligence was wilful and with intent to cause the injury, or the result of intoxication on the part of the injured party;

(4) In actions by an employee against an employer for personal injuries sustained arising out of and in the course of the employment where the employer has elected to reject the provisions of this act, it shall be presumed that the injury to the employee was the first result, and growing out of the negligence of the employer; and that such negligence was the proximate cause of the injury; and in such case the burden of proof shall rest upon the employer to rebut the presumption of negligence.

Every such employer shall be conclusively presumed to have elected to provide, secure, and pay compensation to employees for injuries sustained arising out of and in the course of the employment according to the provisions of this act, unless and until notice in writing of an election to the contrary shall have been given to the employee by posting the same in some conspicuous place at the place where the business is carried on, and also by filing notice with Nevada industrial commission, with return thereon by affidavit, showing the date notice was posted, as by this act provided, substantially in the following form:

Employer's Notice to Reject

To the Employees of the Undersigned, and the Nevada Industrial Commission:

You and each of you are hereby notified that the undersigned rejects the terms, conditions, and provisions to provide, secure, and pay compensation to employees of the undersigned for injuries received as provided in the act of the legislature of the State of Nevada known as the Nevada industrial insurance act, and elects to pay damages for personal injuries received by such

employees under the common law and the statutes of this state modified by subdivisions 1, 2, 3, and 4, of section 1 of said Nevada industrial insurance act and acts amendatory thereto. Signed _____.

State of Nevada, County of _____, ss.

The undersigned, being duly sworn, deposes and says that a true, correct, and verbatim copy of the foregoing notice was on the _____ day of _____, 19____, posted at (state fully place where posted).

Subscribed and sworn to before me by _____ this _____ day of _____, 19____. / _____, Notary Public.

The employer shall keep such notice posted in some conspicuous place which shall apply to the employees subsequently employed by the employer with the same force and effect and to the same extent and in like manner as employees in the employ at the time the notice was given.

Where neither the employer nor the employee has given notice of an election to reject the terms of this act every contract of hire, express or implied, shall be construed as an implied agreement between them, and a part of the contract on the part of the employer to provide, secure, and pay, and on the part of the employee to accept, compensation in the manner as by this act provided for all personal injuries sustained arising out of and in the course of the employment. [As amended, St. 1915, c. 190.]

§ 2. Defenses.—No compensation under this act shall be allowed for an injury caused:

(a) By the employee's wilful intention to injure himself or to wilfully injure another; nor shall compensation be paid to an injured employee if injury is sustained while intoxicated.

§ 3. (a) Exclusive remedy.—The rights and remedies provided in this act for an employee on account of an injury shall be exclusive of all other rights and remedies of such employee, his personal or legal representatives, dependents or next of kin, at common law or otherwise on account of such injury; all employees affected by this act shall be conclusively presumed to have elected to take compensation in accordance with the terms, conditions, and provisions of this act until notice in writing shall have been served upon his employer, and also on the Nevada industrial commission, with return thereon by affidavit showing the date upon which notice was served upon the employer.

(b) Effect of rejection.—In the event that such employee elects to reject the terms, conditions, and provisions of this act, the rights and remedies thereof shall not apply where an employee brings an action or takes proceedings to recover damages or compensation for injuries received growing out of and in the course of his employment, except as otherwise provided by this act; and in such actions where the employee has rejected the terms of this act the employer shall have the right to plead and rely upon any and all defenses, including those at common law, and the rules and defenses of contributory negligence, assumption of risk and fellow servant shall apply and be available to the employer unless otherwise provided in this act; provided, however, that if an employee sustains an injury as the result of the employer's failure to furnish or fails to exercise reasonable care to keep or maintain any safety device required by statute or rule, or violate any of the statutory provisions or rules and regulations now or hereafter in force relating to safety of employees, the doctrine of assumed risk in such case growing out

of the negligence of the employer shall not apply or be available as defensive matter to such offending party. The notice required to be given by an employee shall be substantially in the following form:

Employee's Notice to Reject Terms of This Act

To (Name of Employer) and the Nevada Industrial Commission:

You and each of you are hereby notified that the undersigned elects to reject the terms, conditions, and provisions of an act for the payment of compensation as provided by the industrial insurance act of the State of Nevada and acts amendatory thereto, and elects to rely upon the common law as modified by section 3 of the said act for the right to recover for personal injury which I may receive, if any, growing out of and arising from the employment while in line of duty for my employer above named.

Dated this _____ day of _____, 19—.

Signed _____.

State of Nevada, County of _____, ss.

The undersigned being first duly sworn deposes and says that the written notice was on the _____ day of _____, 19—, served on the within-named employer of the undersigned by delivering to (name of person served) a true, correct, and verbatim copy thereof.

Subscribed and sworn (or affirmed) to before me by the said _____ this _____ day of _____, 19—.

_____, Notary Public.

§ 4. Continuance of election to reject.—(a) When the employer or employee has given notice, in compliance with this act, electing to reject the terms thereof, such election shall continue and be in force until such employer or employee shall thereafter elect to come under the provisions of this act as provided in subsection (b) of this section.

(b) When an employer or employee rejects the terms, conditions, or provisions of this act, such party may at any time thereafter elect to waive the same by giving notice in writing in the same manner required of the party in electing to reject the provisions of this act, and which shall become effective when filed with the Nevada industrial commission. [As amended, St. 1915, c. 190.]

§ 5. Liability where both reject Act.—Where the employer and employee elect to reject the terms, conditions, and provisions of this act, the liability of the employer shall be the same as though the employee had not rejected the terms, conditions, and provisions thereof.

§ 6. Premiums to Commission.—An employer having come under this act, who thereafter elects to reject the terms, conditions and provisions thereof, shall not be relieved from the payment of premiums to Nevada industrial commission prior to the time his notice of rejection becomes effective; and said premiums may be recovered in an action at law as hereinafter in this act provided.

§ 7. Injury caused by third person.—When an employee coming under the provisions of this act receives an injury for which compensation is payable under this act and which injury was caused under circumstances creating a legal liability in some person other than the employer, to pay damages in respect thereof:

(a) The employee or beneficiary may take proceedings against that person to recover damages, but the amount of the compensation to which he is entitled under this act shall be reduced by the amount of the damages recovered;

(b) If the employee or beneficiary in such case receives compensation under this act, the Nevada industrial commission by whom the compensation was paid, shall be entitled to indemnity from the person so liable to pay damages as aforesaid, and shall be subrogated to the rights of the employee to recover therefor.

(c) No contractor or subcontractor shall be entitled to receive compensation under this act, but shall be deemed to be an employer.

§ 8. Nevada Industrial Commission.—(a) The administration of this act on and after April 1, 1915, is hereby imposed upon a commission to be known as the "Nevada Industrial Commission"; and said commission, to consist of three commissioners, is hereby created. The governor, attorney-general, and inspector of mines, shall constitute an industrial commission board for the appointment of such commissioners. Vacancies shall be filled in the same manner for unexpired terms. No more than two of the commission shall be members of the same political party at the date of any appointment. Each commissioner shall hold office for the term of four years from and after date of his appointment, and until his successor shall be appointed and shall have qualified. One commissioner shall be designated by the governor to be, and upon being so designated shall be, chairman of the commission. A decision on any question arising under the act concurred in by two of the commissioners shall be the decision of the commission.

(b) The industrial commission board may remove any commissioner for inefficiency, neglect of duty, or misconduct in office, giving him a copy of the charges against him and an opportunity of being publicly heard in person or by counsel in his own defense, upon not less than ten days' notice. If such commissioner shall be removed, the industrial commission board shall file in the office of the secretary of state a complete statement of all charges made against such commissioner, and the findings thereon, together with a complete record of the proceedings.

(c) Each commissioner shall receive as compensation for his services the sum of ten dollars per day for all days in which he is actually engaged in the business of the commission which in no case shall exceed one hundred and fifty (\$150) dollars per month. The chairman shall also serve as executive officer of the commission, in charge of the office and affairs of the commission, and shall be entitled to additional compensation for such service, which shall be fixed by the industrial commission board and approved by the governor. The executive officer of the commission shall not be financially interested in any business interfering or inconsistent with his duties. A member of the commission, or an employee of the commission, shall not serve on any committee of any political party. [As amended, St. 1915, c. 190.]

§ 9. Sessions.—The commission shall be in continuous session and open for the transaction of business during all the business hours of each and every day excepting Sundays and legal holidays. All sessions shall be open to the public, and shall stand and be adjourned without further notice thereof on its records. All proceedings of the commission shall be shown on its record of proceedings, which shall be a public record and shall contain a record of each case considered, and the award made with respect thereto and all voting shall be had by the calling of each member's name by the secretary and each vote shall be considered as cast.

§ 10. Office—Printing.—The commission shall keep and maintain its office at the capitol, in the town of Carson City, Nevada, and shall be provided

by the board of capitol commissioners with suitable rooms. Except in cases of emergency, all necessary printing, including forms, blanks, envelopes, letterheads, circulars, pamphlets, bulletins and reports required to be printed by said commission shall be done at the state printing office, and it is made the duty of the state printer to have such printing done as expeditiously as possible. [As amended, Stats. 1915, c. 190.]

§ 11. **Assistants.**—The commission may employ a secretary, actuary, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants, and fix their compensation. Such employments and compensation shall be first approved by the governor, and shall be paid out of the state treasury. The members of the commission, actuaries, accountants, inspectors, examiners, experts, clerks, stenographers, and other assistants that may be employed shall be entitled to receive from the state treasury their actual and necessary expenses while traveling in the business of the commission. Such expenses shall be itemized and sworn to by the person who incurred the expense and allowed by the commission.

§ 12. **Rules and regulations.**—The commission shall adopt reasonable and proper rules to govern its procedure, regulate and provide for the kind and character of notices, and the services thereof, in cases of accidents and injury to employees, the nature and extent of the proofs and evidence, and the method of taking and furnishing the same, to establish the rights to benefits of compensation from the state insurance fund, hereinafter provided for, the forms of application of those claiming to be entitled to benefits or compensation therefrom, the method of making investigations, physical examinations and inspections, and prescribe the time within which adjudications and awards shall be made.

§ 13. **Compulsory information.**—Every employer shall furnish the commission, upon request, all information required by it to carry out the purposes of this act. The commission or any member thereof or any person employed by the commission for that purpose, shall have the right to examine under oath any employer or officer, agent or employee thereof.

§ 14. **Filling of blanks.**—Every employer receiving from the commission any blank with directions to fill the same, shall cause the same to be properly filled out as to answer fully and correctly all questions therein propounded, and if unable to do so shall give good and sufficient reasons for such failure. Answers to such questions shall be verified under oath and returned to the board within the period fixed by the commission for such return.

§ 15. **Powers of commissioners.**—Each member of the commission, the secretary and every inspector or examiner appointed by the commission shall, for the purposes contemplated by this act, have power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

§ 16. **Enforcement of orders of Commission.**—In case of disobedience of any person to comply with the order of the commission, or subpoena issued by it or one of its inspectors, or examiners, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refuse to permit an inspection as aforesaid, the district judge of the county in which the person resides, on application of any member of the commission,

or any inspector or examiner appointed by it, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpoenas issued from such court on a refusal to testify therein.

§ 17. **Service and witness fees.**—Each officer who serves such subpoenas shall receive the same fees as a sheriff, and each witness who appears, in obedience to a subpoena, before the commission or an inspector or examiner, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid from the state treasury in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers approved by any two members of the commission. No witness subpoenaed at the instance of a party other than the commission or any inspector shall be entitled to compensation from the state treasury unless the commission shall certify that his testimony was material to the matter investigated.

§ 18. **Depositions.**—In an investigation, the commission may cause deposition of witnesses residing within or without the state to be taken in the manner prescribed by the law for like depositions in civil actions in the courts of record.

§ 19. **Transcript as evidence.**—A transcribed copy of the evidence and proceedings, or any specific part thereof, or any investigation, by a stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript of the testimony on the investigation, or of a particular witness, or of a specific part thereof, carefully compared by him with his original notes and to be a correct statement of the evidence and proceedings had on such investigation so purporting to be taken and subscribed, may be received in evidence by the commission with the same effect as if such stenographer were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand to any party upon the payment of the fee therefor, as provided for transcript in courts of record.

§ 20. **Blank forms.**—The commission shall prepare and furnish blank forms, and provide in its rules for their distributions so that the same may be readily available, of application for benefits or compensation from the state insurance fund, notices to employers, proofs of injury or death, of medical attendance, of employment and wage earnings, and such other blanks as may be deemed proper and advisable, and it shall be the duty of insured employers to constantly keep on hand sufficient supply of such blanks.

§ 21. (a) **Premiums—Classification of Employments.**—Every employer coming within the provisions of this act shall, on or before the fifteenth day of each and every month pay to the Nevada industrial commission for the state insurance fund, in accordance with the following schedule, a sum equal to a percentage of his total pay-roll for the preceding month, to wit:

Construction Work—Initial Premium Rates

Tunnels; bridges; trestles; subaqueous works, ditches and canals (other than irrigation without blasting); fire escapes; sewers; house moving; house wrecking	.035
Iron or steel structures or parts of structures	.040
Electric-light or power plants, or systems; telegraph or telephone systems; pile driving; steam railroads	.050

Steeple, towers, or grain elevators, not metal framed; chimneys; water-works or systems; electric railways with rock work or blasting; blasting; erecting fire-proof doors or shutters.....	.050
Steam heating plants; tanks, water towers or windmills, not metal frames	.040
Shaft sinking	.030
Concrete buildings; freight or passenger elevators; fire-proofing of buildings; galvanized iron or tin works; gas works or systems; marble, stone or brick work; road work with blasting; roof work; safe moving; slate work; outside plumbing work; metal smokestacks or chimneys	.050
Excavations not otherwise specified; blast furnaces.....	.030
Street or other grading; cable or electric street railways without blasting; advertising signs; ornamental metal work in buildings.....	.025
Carpenter work not otherwise specified.....	.035
Installation of steam boilers or engines; placing wire in conduits, installing dynamos; putting up belts for machinery; marble, stone or tile setting, inside work; mantel setting; metal ceiling work; painting of buildings or structures; installation of automatic sprinklers; concrete laying in floors, foundations or street paving; asphalt laying; covering steam pipes or boilers; installation of machinery not otherwise specified.....	.030
Drilling wells; installing electrical apparatus or fire-alarm systems in buildings; house heating or ventilating systems; glass setting; building hothouses; lathing; paper hanging; plastering; inside plumbing; wooden stair building; road making.....	.020
The absence of power-drive machinery does not exempt corporations named in this subdivision, nor the small number of employees engaged, nor the short time required to accomplish the work.	

Operation (Including Repair Work) of

(All combinations of material take the higher rate when not otherwise provided.)

Operation and Repair Work

Logging railroads; railroads; dredges; interurban electric railroads using third-rail system.....	.025
Electric-light or power plants; interurban electric railroads not using third-rail system; quarries.....	.025
Street railways; all employees; telegraph or telephone systems; stone crushing; blasting furnaces, smelters; coal mines; gas works; steam-boats; tugs; ferries.....	.030
Mines, other than coal; steam heating or power plants.....	.025
Grain elevators; laundries; water-works; paper or pulp mills; garbage works	.020

Factories Using Power-Driven Machinery—Factories

Stamping tin or metal.....	.045
Bridge work; railroad car or locomotive making or repairing; cooperage; logging with or without machinery; saw mills; shingle mills; staves; veneer; box; lath; packing cases; sash, door or blinds; barrel; keg; pail; basket; tub; woodenware or wooden fiberware; rolling mills;	

making steam shovels or dredges; tanks; water-towers; asphalt; building material not otherwise specified; fertilizer; stone with or without machinery; kindling wood; masts and spars with or without machinery; canneries, metal stamping extra; creosoting works; pile-treating works	.020
Excelsior, iron, steel, copper, zinc, brass, or lead articles or wares not otherwise specified; hardware; tile, brick, terra cotta; fire clay; pottery; earthenware; ware; porcelain; peat fuel; briquets.....	.020
Breweries; bottling works; boiler works; foundries; machine shops not otherwise specified	.020
Cordage; working in foodstuffs, including oils, fruits, and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber, or textiles not otherwise specified	.015
Making jewelry, soap, tallow, lard, grease, condensed milk.....	.015
Creameries; printing; electrotyping; photo-engraving; engraving, litho-graphing	.015

Miscellaneous Work

Operating stock-yards, with or without railroad entry; packing-houses...	.025
Artificial ice, refrigerating or cold storage plants; tanneries; electric systems not otherwise specified.....	.020
Theater stage employees.....	.015
Fireworks manufacturing	.050
Powder works	.100
All other employments not herein specified.....	.015

(b) **Change in rates.**—The Nevada industrial commission shall have the power, as experience and conditions demand, to increase or decrease the rates above provided; sixty days' notice of any change in rates shall be given before the same shall become effective; the commission shall have the power, and it shall be their duty, to classify occupations with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premiums of the same, based upon the total pay-roll and number of employees in each of said classes of occupation sufficiently large to provide an adequate fund for the compensation provided for in this act, and to create a surplus sufficiently large to guarantee a satisfactory state insurance fund from year to year.

(c) **Medical, surgical or hospital treatment.**—In addition to the premiums which the employer is required to contribute to the state insurance fund, the employer shall furnish and promptly provide for an injured employee such medical, surgical, or hospital aid or treatment as may be reasonably required at the time of the injury, and thereafter during the disability, but not exceeding four months, to cure and relieve from the effects of the injury. If the employer neglects or refuses seasonably to do so, the injured employee may do so at the expense of the employer.

To equalize the burden of the cost of medical, surgical, or hospital aid or treatment, as provided for in this section, mutual or cooperative arrangements may be made between the employer and employee, and the employer may assess each employee and deduct from the wages of each employee a sum not to exceed one dollar each month as the employee's contribution to a fund to provide medical, surgical, or hospital aid or treatment required by this act.

Any employer may jointly with other employers organize and maintain mutual or cooperative associations to furnish medical, surgical, or hospital aid or treatment equal to or greater than is provided for in this act.

In the event that any employer neglects or refuses seasonably to furnish the medical, surgical, or hospital aid or treatment provided for in this act, the injured employee may elect to receive such medical, surgical, or hospital aid or treatment provided by or through the Nevada industrial commission. If the injured employee elects to have such medical, surgical, or hospital aid or treatment provided by or through the Nevada industrial commission, the cause of action of said injured employee against the employer or hospital association shall be assigned to the Nevada industrial commission for the benefit of the state insurance fund, and the Nevada industrial commission shall furnish to said injured employee the medical, surgical, or hospital aid or treatment provided for in this act.

All fees and other charges for such medical, surgical, or hospital aid or treatment shall be subject to regulation by the commission, and shall be limited to such charges as prevail in the same community for similar treatment of injured persons of like standard of living. [As amended, St. 1915, c. 190.]

§ 22. Advance of rate in hazardous employment.—Whenever an establishment or work is dangerous in comparison with other like establishments or works, the Nevada industrial commission may advance its classification of risk and premium rates in proportion to the hazard. Such advancement of classification of risks and premium rates may be made without previous notice. [As amended, St. 1915, c. 190.]

§ 23. Time of payment of premium.—The premiums above provided shall be paid on or before the 15th day of each and every month, commencing on the 15th day of August, 1913, and each and every month thereafter upon the pay-roll for the month preceding.

§ 24. State Insurance Fund.—All premiums provided for in this act shall be paid to the state treasurer, and shall constitute the state insurance fund for the benefit of employees of employers and for the benefit of dependents of such employees, and shall be disbursed as hereinafter provided.

§ 25. Schedule of compensation.—Every employee or workman coming within the provisions of this act, who shall be injured by accident arising out of or in the course of employment, or his dependents, as hereinafter defined shall be entitled to receive the following compensation:

If death results from the injury, compensation shall be paid to the dependents of deceased employee in monthly installments, as follows:

(a) If there be total dependents, compensation shall be paid only to such total dependents, as follows:

1. To the dependent widow or widower, if there be no dependent children, forty per cent of the average monthly wage, but not less than twenty dollars nor more than sixty dollars per month for a period of one hundred months, but in no case to exceed the sum of four thousand dollars.

2. To the dependent widow or widower, if there be one child or two children, fifty per cent of the average monthly wage, but not less than twenty dollars nor more than sixty dollars per month for a period of one hundred months, but in no case to exceed the sum of five thousand dollars.

3. To the dependent widow or widower, if there be more than two dependent children, sixty per cent of the average monthly wage, but not less than

twenty dollars nor more than sixty dollars per month for a period of one hundred months, but in no case to exceed the sum of six thousand dollars.

Compensation to the widow or widower shall be for the use and benefit of such widow or widower and of the dependent children, and the Nevada industrial commission may, from time to time, apportion such compensation between them in such way as it deems best.

4. If there be no dependent widow or widower, but a dependent child or children, compensation shall be allowed for the support of minor children under the age of sixteen years, the total amount thereof to be not less than ten dollars nor more than thirty-five dollars per month, to be fixed by the commission. The duration of such compensation shall also be fixed by the commission.

5. If the deceased employee leaves dependents only partly dependent upon his earnings for support at the time of his injury, the monthly compensation to be paid shall be equal to the same proportion of the monthly payments for the benefit of persons totally dependent as the amount contributed by the employee to such partial dependents bears to the average wages of deceased at the time of his injury. The duration of such compensation to partial dependents shall be fixed by the commission, but in no case shall exceed one hundred months.

6. In all other cases, questions of total or partial dependency shall be determined in accordance with the facts as the facts may be at the time of the injury; and in such cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partially dependent, if any, shall receive no part thereof. If there is no one wholly dependent and more than one person partially dependent the death benefit shall be divided among them according to the relative extent of the dependency; provided, however, that when a lump sum is paid, as contemplated by this act, the commission, in making distribution thereof shall take into consideration the contingent rights of partial beneficiaries or the rights of those who may become such after a wholly dependent child or children becomes sixteen years of age.

7. If death results from the injury, burial expenses not to exceed the sum of one hundred and twenty-five dollars shall be paid in addition to the compensation payable under this act.

Total Disability

For temporary total disability, compensation of fifty per cent of the average monthly wage, but not more than sixty dollars nor less than twenty dollars a month, but not exceeding one hundred months, during the period of such disability, total amount not to exceed five thousand dollars.

For permanent total disability, compensation of fifty per cent of the average monthly wage, but not more than sixty dollars nor less than twenty dollars a month, for a period not to exceed one hundred months, total amount not to exceed five thousand dollars.

In case of the following specified injuries, the disability caused thereby shall be deemed total and permanent:

1. The total and permanent loss of sight in both eyes.
2. The loss by separation of both legs at or above the knee.
3. The loss by separation of both arms at or above the elbow.

4. The loss by separation of one arm at or above the elbow, and one leg by separation at or above the knee.

5. An injury to the spine resulting in permanent and complete paralysis of both legs or both arms.

6. An injury to the skull resulting in incurable imbecility or insanity.

The above enumeration is not to be taken as exclusive, and in all other cases permanent total disability shall be determined in accordance with the facts.

Where there has been a previous disability, as the loss of one eye, one hand, one foot, or any other previous permanent disability, the percentage of disability for a subsequent injury shall be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury.

Partial Disability

For temporary partial disability, one-half of the difference between the wages earned before injury and wages which the injured is able to earn thereafter, but not more than forty dollars a month for a period not to exceed sixty months during the period of such disability.

In the case of any of the following specified injuries, the disability caused thereby shall be deemed a permanent partial disability and the amounts named shall be paid in addition to compensation paid for temporary total disability:

1. For the loss of a thumb, fifty per cent of the average monthly wages during fifteen months.

2. For the loss of the first finger, commonly called the index finger, fifty per cent of the average monthly wages during nine months.

3. For the loss of a second finger, fifty per cent of the average monthly wages during seven months.

4. For the loss of a third finger, fifty per cent of the average monthly wages during five months.

5. For the loss of a fourth finger, commonly called the little finger, fifty per cent of the average monthly wages during four months.

6. The loss of the distal or second phalange of the thumb, or the distal or third phalange of the first, second, third, or fourth fingers, shall be considered a permanent partial disability and equal to the loss of one-half of such thumb or finger and compensation shall be one-half of the amount specified for the loss of the entire thumb or finger.

7. The loss of more than one phalange of the thumb or finger shall be considered as the loss of the entire finger or thumb; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

8. For the loss of a great toe, fifty per cent of the average monthly wages during seven months.

9. For the loss of one of the other toes other than the great toe, fifty per cent of the average monthly wages during two and one-half months.

10. However, the loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified.

11. The loss of more than one phalange shall be considered as the loss of the entire toe.

12. For the loss of a hand, fifty per cent of the average monthly wages during forty months.

13. For the loss of an arm, fifty per cent of the average monthly wages during fifty months.

14. For the loss of a foot, fifty per cent of the average monthly wages during thirty-five months.

15. For the loss of a leg, fifty per cent of the average monthly wages during forty-five months.

16. For the loss of an eye, fifty per cent of the average monthly wages during twenty-five months.

17. For permanent and complete loss of hearing in one ear, fifty per cent of the average monthly wages during twenty months.

18. For permanent and complete loss of hearing in both ears, fifty per cent of the average monthly wages during sixty months.

19. The permanent and complete loss of the use of a finger, toe, arm, hand, foot, or leg may be deemed the same as the loss of any such member by separation.

20. The permanent and complete loss of sight in one eye may be deemed as the loss of one eye.

21. Facial disfigurement: For permanent disfigurement about the head and face, the commission may allow such sum for compensation thereof as it may deem just, not exceeding fifty per cent of monthly wages during twelve months.

In all cases of permanent partial disability, not otherwise specified in the foregoing schedule, the disability shall be determined according to the percentage thereof, taking into account, among other things, any previous disability, the occupation of the injured employee, the nature of the physical injury or disfigurement, and the age of the employee at the time of the injury; and the compensation paid therefor shall be the percentage of the disability caused by the injury times fifty per cent of the average monthly wage (but not more than fifty dollars a month) for not exceeding one hundred months during the life of the injured employee. Whenever the monthly payments under this subsection are so small that the payments thereof during the full period will work a hardship on the beneficiary, or be of no substantial benefit, the period may be shortened and the payments correspondingly increased in such a manner that the same may be of substantial benefit to the injured employee. [As amended, St. 1915, c. 190.]

§ 26. **Dependents.**—The following persons shall be conclusively presumed to be totally dependent for support upon a deceased employee:

1. A wife upon a husband whom she has not voluntarily abandoned at the time of injury.

2. A husband, mentally or physically incapacitated from wage earning, upon a wife whom he has not voluntarily abandoned at the time of injury.

3. A natural, posthumous, or adopted child or children, whether legitimate or illegitimate, under the age of sixteen years, or over that age, if physically or mentally incapacitated from wage earning, upon the parent with whom he or they are living at the time of the injury resulting in the death of such parent, there being no surviving parent. In cases where there is more than one child thus dependent, the death benefit shall be divided between such dependents in such proportion as may be determined by the commission after considering the age of such dependents and other facts bearing on such dependency. Step-parents may be regarded in this act as parents, if the fact of dependency is

shown, and a step-child or step-children may be regarded in this act as a natural child or children if the existence and fact of dependency is shown.

Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the accident or injury to the employee and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions, and the death benefits shall be directly recoverable by and payable to the dependent or dependents entitled thereto, or to their legal guardians or trustees. [As amended, Stats. 1915, c. 190.]

§ 27. **Waiting period.**—No compensation shall be paid under this act for an injury which does not incapacitate the employee for a period of at least seven days from earning full wages, but if the incapacity extends beyond the period of seven days, compensation shall begin on the eighth day after the injury; provided, however, that if such disability continues for two weeks beyond the period of said seven days such compensation shall be computed from the date of the injury. [As amended Stats. 1915, c. 190.]

§ 28. **Assignability and exemption.—Payment to representative.**—Compensation payable under this act, whether determined or due, or not, shall not, prior to the issuance and delivery of the warrant therefor, be assignable; shall be exempt from attachment, garnishment, and execution, and shall not pass to any other person by operation of law; provided, however, that the payments to the consul-general, consul, vice-consul general, or vice-consul, of the nation of which any dependent of a deceased employee is a resident or subject, or a representative of such consul-general, consul, vice-consul general, or vice-consul, of any compensation due under this act to any dependent residing outside of the United States, any power of attorney to receive or receipt for the same to the contrary notwithstanding, shall be as full a discharge of the benefits or compensation payable under this act as if payments were made directly to the beneficiary. [As amended, St. 1915, c. 190.]

§ 29. **Contracting out.**—No employer or workman shall exempt himself from the burden, or waive the benefits of this act by any contract, agreement, rule, regulation, or device; and any such contract, agreement, rule, regulation, or device shall be absolutely void.

§ 30. **Lump sum on marriage of widow.**—Upon the marriage of a widow, she shall receive once and for all, a lump sum equal to twelve times her monthly allowance, not to exceed, however, the sum of \$300; provided, however, that allowance shall be made by the commission for the support of minor children under the age of sixteen years; the total amount thereof to be not less than \$10, nor more than \$35 per month, to be fixed by the commission.

§ 31. **Commutation of lump sum.**—The Nevada industrial commission, may, in its discretion, allow the conversion of the compensation herein provided for into a lump sum payment, not to exceed the sum of \$5,000, under such rules and regulations and system of computation as may be devised for obtaining the present value of such compensation.

§ 32. **Medical examination.**—(a) Any workman entitled to receive compensation under this act is required, if requested by the commission, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman, and as may be provided by the rules of the commission. The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employee and his physical condition and ability to attend at the time and

place fixed. The employee shall be entitled to have a physician, provided and paid for by himself, present at any such examination. If the employee refuses to submit to any such examination, or obstructs the same, his right to compensation shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period. Any physician who shall make or be present at any such examination may be required to testify as to the result thereof.

(b) If any employee shall persist in unsanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, the commission may, in its discretion, reduce or suspend the compensation of any such injured employee.

(c) If, for the purpose of obtaining any benefit or payment under the provisions of this act, either for himself or for any other person, any one wilfully makes a false statement or representation, he shall be guilty of a misdemeanor, and if a claimant he shall forfeit all right to compensation under this act after conviction for such offense. [As amended, St. 1915, c. 190.]

§ 33. Employer's report of accident.—Whenever any accident occurs to any workman it shall be the duty of the employer to at once report such accident and the injury resulting therefrom to the commission, and also to any local representative of the commission. Such report shall state:

(1) The time, cause, and nature of the accident and injuries, and the probable duration of the injury resulting therefrom.

(2) Whether the accident arose out of or in the course of the injured person's employment.

(3) Any other matters the rules and regulations of the commission may prescribe.

§ 34. Application for compensation.—(a) Where a workman is entitled to compensation under this act he shall file with the department, his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this act and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman.

(b) Where death results from injury to [the] parties entitled to compensation under this act, or some one in their behalf, shall make application for the same to the department, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this act, certificates of attending physician, if any, and such other proof as required by the rules of the department.

(c) If change of circumstances warrant an increase or rearrangement of compensation, like application shall be made therefor. No increase or rearrangement shall be operative for any period prior to application therefor.

(d) No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the right thereto accrued.

§ 35. Inspection of employer's records—Penalty for refusal.—The books, records, and pay-rolls of the employer pertinent to the administration of this act shall always be open to inspection by the commission or its traveling auditor, agent, or assistant, for the purpose of ascertaining the correctness of the pay-roll, the men employed, and such other information as may

be necessary for the commission and its management under this act. Refusal on the part of the employer to submit said books, records, and pay-rolls for such inspection to any member of the commission or any assistant presenting written authority from the commission shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the Nevada industrial commission and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor. ♦

§ 36. Misrepresentation of pay-roll—Penalty.—Any employer who shall misrepresent to the department the amount of pay-roll upon which the premium under this act is based shall be liable to the Nevada industrial commission in ten times the amount of the difference in premium paid and the amount the employer should have paid. The liability to the Nevada industrial commission shall be enforced in a civil action in the name of the Nevada industrial commission. All sums collected under this section shall be paid into the accident fund.

§ 37. Default of payment—Collection.—If any employer shall default in any payment to the accident fund hereinbefore in this act required, the sum due shall be collected by action at law in the name of the Nevada industrial commission as plaintiff, and such right of action shall be in addition to any other right of action or remedy. In respect to any injury happening to any of his workmen during the period of any default in the payment of any premium under section 6, the defaulting employer shall not, if such default be after demand for payment, be entitled to the benefits of this act, but shall be liable to suit by the injured workman (or the husband, wife, child, or dependent of such workman in case death result from the accident) as he would have been prior to the passage of this act. In case the recovery actually collected in such suit shall equal or exceed the compensation to which the plaintiff therein would be entitled under this act, the plaintiff shall not be paid anything out of the accident fund; if the said amount shall be less than such compensation under this act, the accident fund shall contribute the amount of the deficiency. The person so entitled under the provisions of this section to sue shall have the choice (to be exercised before suit) of proceeding by suit or taking under this act. If such person shall take under this act, the cause of action against the employer shall be assigned to the Nevada industrial commission for the benefit of the accident fund. In any suit brought upon such cause of action the measure of liability shall be as provided in section 1, subdivision c—1, 2, 3, and 4—of this act. Any such cause of action assigned to the Nevada industrial commission may be prosecuted or compromised by the department in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

§ 38. Authority to sue given Commission.—The Nevada industrial commission is hereby authorized and empowered to prosecute, defend, and maintain actions in the name of the commission for the enforcement of the provisions of this act, and verification of any pleading, affidavit, or other paper required may be made by any member of the commission or by the secretary thereof. In any action or proceeding or in the prosecution of any appeal by the commission, no bond or undertaking shall ever be required to be furnished by the commission.

§ 39. Injury due to absence of safeguard—Penalty.—If any workman be injured because of the absence of any safeguard or protection required to be provided or maintained by, or pursuant to, any statute or ordinance or any departmental regulation under any statute, or be at the time of the injury of less than the maximum age prescribed by law for the employment of the minor in the occupation in which he shall be engaged when injured, the employer shall be liable to the Nevada industrial commission for a penalty of not less than \$300 or more than \$2,000 to be collected in a civil action at law by the commission.

The foregoing provision of this act shall not apply to the employer if the absence of such guard or such protection be due to the removal thereof by the injured workman himself, or with his knowledge, by any fellow-workman, unless such removal be by order or direction of the employer or superintendent or foreman of the employer. If the removal of such guard or protection be by the workman himself, or be by his consent, by any of his fellow-workmen, unless done by order or direction of the employer or superintendent or foreman of the employer, the compensation of such injured workman, as provided for by section 25 of this act, shall be reduced twenty-five per cent.

§ 40. (a) State Insurance Fund.—The premiums, contributions, penalties, properties, or securities paid, collected, or acquired by operation of this act shall constitute a fund to be known as the "State Insurance Fund." All disbursements from the state insurance fund shall be paid by the state treasurer upon warrants or vouchers of the Nevada industrial commission, authorized and signed by any two members of the commission. The state treasurer shall be liable on his official bond for the faithful performance of his duty as custodian of the state insurance fund. The State of Nevada shall not be liable for the payment of any compensation or any salaries or expenses in the administration of this act, save and except from the state insurance fund, but shall be responsible for the safety and preservation of the state insurance fund.

(b) Investment of fund.—The Nevada industrial commission may, pursuant to a resolution of the commission, approved by the governor, invest not to exceed sixty per cent of the amount of said fund in the bonds of the United States, in the bonds of this or other states, or in the bonds of any county of the State of Nevada, or other states. The commission shall make due and diligent inquiry as to the financial standing of the state or states, county or counties, whose bonds or securities it proposes to purchase, and shall also require the attorney-general to give his legal opinion in writing as to the validity of any act or acts of any state or county under which such bonds are issued.

All such bonds or securities shall be placed in the hands of the state treasurer, who shall be the custodian thereof. He shall collect the principal and interest thereon when due, and pay the same into the state insurance fund. He shall notify the Nevada industrial commission of the amounts so paid into the state insurance fund, giving full details of the transaction. The state treasurer shall pay all vouchers drawn on the state insurance fund for the making of such investments when signed by two members of the commission, upon delivery of such bonds or securities to him when there is attached to such vouchers a copy of the resolution of the commission authorizing the investment, approved by the governor, said copy to be certified by the secre-

tary under seal of the commission. The commission may, upon like resolution approved by the governor, sell any of such bonds or securities.

(c) **Deposit.**—The state treasurer may, upon written authority of the Nevada industrial commission, approved by the governor, deposit an additional fifteen per cent of said fund in bank or banks in the State of Nevada upon special time deposits bearing interest at not less than three per cent per annum; provided, however, that such bank or banks in which deposits may be made shall give to the Nevada industrial commission a good and sufficient surety deposit bond guaranteeing said Nevada industrial commission against any loss of said deposit by reason of failure, suspension, or otherwise of said bank. Interest earned by such portion of the state insurance fund which may be deposited in any bank or banks, as herein provided, shall be placed to the credit of the state insurance fund.

(d) **Oath and bond of commissioners.**—Each member of the commission, before entering upon the duties of his office, shall take the oath prescribed by the constitution, and shall give good and sufficient bond running to the State of Nevada, in the penal sum of ten thousand dollars, conditioned that he shall faithfully discharge the duties of his office; said bonds shall be signed by a surety company duly authorized to do business in this state, or by two or more individuals as surety or sureties; shall be subject to approval by the governor, and shall then be filed with the secretary of state. If surety company bonds be furnished, the premium therefor shall be paid out of the state insurance fund as other expenses of the commission are paid.

(e) **Seal of Commission.**—The commission shall have a seal upon which shall be inscribed the words "Nevada Industrial Commission—State of Nevada." Its seal shall be fixed to all orders, proceedings, and copies thereof, and to such other instruments as the commission may direct. All courts shall take judicial notice of such seal, and any copy of any record or proceeding of the commission certified under such seal shall be received in all courts as evidence of the original thereof. [As amended, St. 1915, c. 190.]

§ 41. **Territorial operation.**—If a workman or employee within the provisions of this act, who has been hired in this state, and whose usual and ordinary duties of such employment are confined to the state, is sent out of the state on business or employment of his employer, and receives personal injury by accident arising out of and in the course of such employment, he shall be entitled to receive compensation according to the provisions of this act, even though such injury was received outside of this state. [As amended, St. 1915, c. 190.]

§ 42. **Title.**—This act shall be known as the "Nevada Industrial Insurance Act."

§ 43. **Employés excluded.**—This act shall apply to all employers of labor in the State of Nevada and their employees and dependents of their employees, but excludes any employee engaged in farm or agricultural labor, stock or poultry raising, or household domestic service; and no contract of employment, insurance, relief benefit, or indemnity, or any other device shall modify, change, or waive any liability created by this act; and such contract of employment, insurance, relief benefit, or indemnity or other device, having for its purpose the waiver or modification of the terms or liability created by this act, shall be void. [As amended, St. 1915, c. 190.]

§ 44. **Validity of Act.**—If any employer shall be adjudicated to be outside the lawful scope of this act, the act shall not apply to him or his work-

men, or if any workman shall be adjudicated to be outside the lawful scope of this act because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of section 21 of this act for the creation of the insurance fund, or the provisions of this act making the compensation to the workman provided in it exclusive of any other remedy on the part of the workman, shall be held invalid, the entire act shall be thereby invalidated except the provisions of section 46, and an accounting according to the justice of the case shall be had of moneys received. In other respects an adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any part thereof.

§ 45. Limitations in case of invalidity.—If the provisions of this act relative to compensation for injuries to or death of workmen become invalid because of any adjudication, or be repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this act by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of the validity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death; provided, that such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the insurance fund to the workman on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the insurance fund the payment provided for by section 21, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited, but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed.

§ 46. Distribution of fund in case of repeal.—If this act shall be hereafter repealed, all moneys which are in the insurance fund at the time of the repeal shall be subject to such disposition as may be provided by the legislature, and in default of such legislative provision distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

§ 47. Retroactive.—This act shall not affect any action pending or cause of action existing on June 30, 1913.

§ 48. When effective.—This act shall be effective July 1, 1913.

§ 49. Repealing clause.—All acts and parts of acts in conflict herewith are hereby repealed.

NEW HAMPSHIRE

WORKMEN'S COMPENSATION ACT

Section

1. Application of Act—Employments.
2. Liability for damages—Assumption of risks—Contributory negligence.
3. Elective compensation—Acceptance of Act—Revocation—Bonds—Provisos.
4. Other remedies—Election of remedies.
5. Notice and claim.
6. Amount of compensation.
7. Medical examination.

Section

8. Proceedings by guardian.
9. Settlement of controversies—Agreement—Action—Judgment—Commutation to lump sum.
10. Payments—Preferential claim—Assignability—Exemption—Abatement.
11. Attorney's fee and lien.
12. Returns to commissioner of labor.
13. Time Act takes effect.

WORKMEN'S COMPENSATION ACT

(Laws 1911, c. 163.)

An Act in Relation to Employers' Liability and Workmen's Compensation.

§ 1. **Application of Act—Employments.**—This act shall apply only to workmen engaged in manual or mechanical labor in the employments described in this section, which, from the nature, conditions or means of prosecution of such work, are dangerous to the life and limb of workmen engaged therein, because in them the risks of employment and the danger of injury caused by fellow servants are great and difficult to avoid. (a) The operation on steam or electric railroads of locomotives, engines, trains or cars, or the construction, alteration, maintenance or repair of steam railroad tracks or road beds over which such locomotives, engines, trains or cars are or are to be operated. (b) Work in any shop, mill, factory or other place on, in connection with or in proximity to any hoisting apparatus, or any machinery propelled or operated by steam or other mechanical power in which shop, mill, factory or other place five or more persons are engaged in manual or mechanical labor. (c) The construction, operation, alteration or repair of wires or lines of wires, cables, switch-boards or apparatus, charged with electric currents. (d) All work necessitating dangerous proximity to gunpowder, blasting powder, dynamite or any other explosives, where the same are used as instrumentalities of the industry, or to any steam boiler owned or operated by the employer, provided injury is occasioned by the explosion of any such boiler or explosive. (e) Work in or about any quarry, mine or foundry. As to each of said employments it is deemed necessary to establish a new system of compensation for accidents to workmen.

§ 2. **Liability for damages—Assumption of risks—Contributory negligence.**—If, in the course of any of the employments above described, personal injury by accident arising out of and in the course of the employment is caused to any workman employed therein, in whole or in part, by failure of the employer to comply with any statute, or with any order made under authority of law, or by the negligence of the employer or any of his or its officers, agents or employees, or by reason of any defect, or any insufficiency due to his, its or their negligence in the condition of his or its plant, ways, works, machinery, cars, engines, equipment, or appliances, then such employer shall be liable to such workman for all damages occasioned to him, or, in case of

his death, to his personal representatives for all damages now recoverable under the provisions of chapter 191 of the Public Statutes. The workman shall not be held to have assumed the risk of any injury due to any cause specified in this section; but there shall be no liability under this section for any injury to which it shall be made to appear by a preponderance of evidence that the negligence of the plaintiff contributed. The damages provided for by this section shall be recovered in an action on the case for negligence.

§ 3. Elective compensation—Acceptance of Act—Revocation—Bonds

—Provisos.—The provisions of section 2 of this act shall not apply to any employer who shall have filed with the commissioner of labor his declaration in writing that he accepts the provisions of this act as contained in the succeeding sections, and shall have satisfied the commissioner of labor of his financial ability to comply with its provisions, or shall have filed with the commissioner of labor a bond, in such form and amount as the commissioner may prescribe, conditioned on the discharge by such employer of all liability incurred under this act. Such bond shall be enforced by the commissioner of labor for the benefit of all persons to whom such employer may become liable under this act in the same manner as probate bonds are enforced. The commissioner may, from time to time, order the filing of new bonds, when in his judgment such bonds are necessary; and after thirty days from the communication of such order to any employer, such employer shall be subject to the provisions of section 2 of this act until such order has been complied with. The employer may at any time revoke his acceptance of the provisions of the succeeding sections of this act by filing with the commissioner of labor a declaration to that effect, and by posting copies of such declaration in conspicuous places about the place where his workmen are employed. Any person aggrieved by any decision of the commissioner under this section may apply by petition to any justice of the superior court for a review of such decision and said justice on notice and hearing shall make such order affirming, reversing or modifying such decision as justice may require; and such order shall be final. Such employer shall be liable to all workmen engaged in any of the employments specified in section 1, for any injury arising out of and in the course of their employment, in the manner provided in the following sections of this act. Provided, that the employer shall not be liable in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed, and provided, that the employer shall not be liable in respect of any injury to the workman which is caused in whole or in part by the intoxication, violation of law, or serious or wilful misconduct of the workman. Provided, further, that the employer shall at the election of the workman, or his personal representative, be liable under the provisions of section 2 of this act for all injury caused in whole or in part by wilful failure of the employer to comply with any statute, or with any order made under authority of law.

§ 4. Other remedies—Election of remedies.—The right of action for damages caused by any such injury, at common law, or under any statute in force on January one, nineteen hundred and eleven, shall not be affected by this act, but in case the injured workman, or in event of his death his executor or administrator, shall avail himself of this act, either by accepting any compensation hereunder, by giving the notice hereinafter prescribed, or by beginning proceedings therefor in any manner on account of any such injury, he

shall be barred from recovery in every action at common law or under any other statute on account of the same injury. In case after such injury the workman, or in the event of his death his executor or administrator, shall commence any action at common law or under any statute other than this act against the employer therefor, he shall be barred from all benefit of this act in regard thereto.

§ 5. Notice and claim.—No proceedings for compensation under this act shall be maintained unless notice of the accident as hereinafter provided has been given to the employer as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured and during such disability, and unless claim for compensation has been made within six months from the occurrence of the accident, or in case of the death of the workman, or in the event of his physical or mental incapacity, within six months after such death or the removal of such physical or mental incapacity, or in the event that weekly payments have been made under this article, within six months after such payments have ceased, but no want or defect or inaccuracy of a notice shall be a bar to the maintenance of proceedings unless the employer proves that he is prejudiced by such want, defect or inaccuracy. Notice of the accident shall apprise the employer of the claim for compensation under this article, and shall state the name and address of the workman injured, and the date and place of the accident. The notice may be served personally or by sending it by mail in a registered letter addressed to the employer at his last known residence or place of business.

§ 6. Amount of compensation.—(1) The amount of compensation shall be, in case death results from injury: (a) If the workman leaves any widow, children or parents, resident of this state, at the time of his death, then wholly dependent on his earnings, a sum to compensate them for loss, equal to one hundred and fifty times the average weekly earnings of such workman when at work on full time during the preceding year during which he shall have been in the employ of the same employer, or if he shall have been in the employment of the same employer for less than a year then one hundred and fifty times his average weekly earnings on full time for such less period. But in no event shall such sum exceed three thousand dollars. Any weekly payments made under this act shall be deducted from the sum so fixed. (b) If such widow, children or parents at the time of his death are in part only dependent upon his earnings, such proportion of the benefits provided for those wholly dependent as the amount of the wage contributed by the deceased to such partial dependents at the time of injury bore to the total wage of the deceased. (c) If he leaves no such dependents, the reasonable expenses of his medical attendance and burial, not exceeding one hundred dollars. Whatever sum may be determined to be payable under this act in case of death of the injured workman shall be paid to his legal representative for the benefit of such dependents, or if he leaves no such dependents, for the benefit of the persons to whom the expenses of medical attendance and burial are due.

(2) Where total or partial incapacity for work at any gainful employment results to the workman from the injury, a weekly payment commencing at the end of the second week after the injury and continuing during such incapacity, subject as herein provided, not exceeding fifty per centum of his average weekly earnings when at work on full time during the preceding year during which he shall have been in the employment of the same employer, or

if he shall have been in the employment of the same employer for less than a year, then a weekly payment of not exceeding one-half the average weekly earnings on full time for such less period. In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average earnings of the workman before the accident and the average amount he is able to earn thereafter as wages in the same employment or otherwise. In fixing the amount of the weekly payment, regard shall be had to any payment, allowance or benefit which the workman may have received from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in the same employment or otherwise after the accident, but shall amount to one-half of such difference. In no event shall any compensation paid under this act exceed the damage suffered, nor shall any weekly payment payable under this act in any event exceed ten dollars a week or extend over more than three hundred weeks from the date of the accident. Such payment shall continue for such period of three hundred weeks provided total or partial disability continue during such period. No such payment shall be due or payable for any time prior to the giving of the notice required by section 5 of this act.

§ 7. Medical examination.—Any workman entitled to receive weekly payments under this act is required, if requested by the employer, to submit himself for examination by a duly qualified medical practitioner or surgeon provided and paid for by the employer, at a time and place reasonably convenient for the workman, within two weeks after the injury, and thereafter at intervals not oftener than once in a week. If the workman refuses to submit to such examination, or obstructs the same, his right to weekly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

§ 8. Proceedings by guardian.—In case an injured workman shall be mentally incompetent at the time when any right or privilege accrues to him under this act, the guardian of the incompetent appointed pursuant to law may, on behalf of such incompetent, claim and exercise any such right or privilege with the same force and effect as if the workman himself had been competent and had claimed or exercised any such right or privilege, and no limitation of time in this act provided for shall run so long as said incompetent workman has no guardian.

§ 9. Settlement of controversies—Agreement—Action—Judgment—Commutation to lump sum.—Any question as to compensation which may arise under this act shall be determined by agreement or by an action at equity, as hereinafter provided. In case the employer fail to make compensation as herein provided, the injured workman, or his guardian, if such be appointed, or his executor or administrator, may then bring an action to recover compensation under this act in any court having jurisdiction of an action for recovery of damages for negligence for the same injury between the same parties. Such action shall be by petition in equity, which may be made returnable at the appropriate term of the superior court or may be filed in the office of the clerk of the superior court and presented in term time or vacation to any justice of said court, who on reasonable notice shall hear the parties and render judgment thereon. The judgment in such action if in favor of the

plaintiff shall be for a lump sum equal to the amount of payments then due and prospectively due under this act. In such action by an executor or administrator the judgment may provide the proportions of the award or the costs to be distributed to or between the several dependents. If such determination is not made it shall be determined by the probate court in which such executor or administrator is appointed, in accordance with this act, on petition of any party interested, on such notice as such court may direct. Any employer who has declared his intention to act under the compensation features of this act shall also have the right to apply by similar proceedings to the superior court or to any justice thereof for a determination of the amount of the weekly payments to be paid the injured workman, or of a lump sum to be paid the injured workman in lieu of such weekly payments; and either such employer or workman may apply to said superior court or to any justice thereof in similar proceeding for the determination of any other question that may arise under the compensation feature of this act; and said court or justice, after reasonable notice and hearing, may make such order as to the matter in dispute and taxable costs as justice may require.

§ 10. Payments—Preferential claim—Assignability—Exemption—Abatement.—Any person entitled to weekly payments under this act against any employer shall have the same preferential claim therefor against the assets of the employer as is allowed by law for a claim by such person against such employer for unpaid wages or personal services. Weekly payments due under this act shall not be assignable or subject to levy, execution, attachment or satisfaction of debts. Any right to receive compensation under this act shall be extinguished by the death of the person entitled thereto.

§ 11. Attorney's fee and lien.—No claim of any attorney-at-law for any contingent interest in any recovery under this act for services in securing such recovery or for disbursements shall be an enforceable lien on such recovery, unless the account of the same be approved in writing by a justice of the superior court, or, in case the same be tried in any court, by the justice presiding at such trial.

§ 12. Returns to commissioner of labor.—Every employer subject to the provisions of this act, shall from time to time make to the commissioner of labor such returns as to its operation as said commissioner may require upon blanks to be furnished by said commissioner. Any employer failing to make such returns when required by said commissioner shall, until such returns are made, be subject to the provisions of section 2 of this act.

§ 13. Time Act takes effect.—This act shall take effect January first, nineteen hundred and twelve.

Approved April 15, 1911.

NEW JERSEY

WORKMEN'S COMPENSATION ACT

Section

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WORKMEN'S COMPENSATION ACT

(Laws 1911, c. 95, as Amended in Accordance with Laws 1913, c. 174.)

An act prescribing the liability of an employer to make compensation for injuries received by an employé in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

§ I. COMPENSATION BY ACTION AT LAW

1. Circumstances under which compensation becomes due.—When personal injury is caused to an employé by accident arising out of and in the course of his employment, of which the actual or lawfully imputed negligence of the employer is the natural and proximate cause, he shall receive compensation therefor from his employer, provided the employé was himself not willfully negligent at the time of receiving such injury, and the question of whether the employé was willfully negligent shall be one of fact to be submitted to the jury, subject to the usual superintending powers of a court to set aside a verdict rendered contrary to the evidence.

2. Abolition of defenses.—The right to compensation as provided by section I of this act shall not be defeated upon the ground that the injury was caused in any degree by the negligence of a fellow employé; or that the injured employé assumed the risks inherent in or incidental to or arising out of his employment or arising from the failure of the employer to provide and maintain safe premises and suitable appliances; which said grounds of defense are hereby abolished.

3. Independent and sub-contractor—Liability.—If an employer enters into a contract, written or verbal, with an independent contractor to do part of such employer's work, or if such contractor enters into a contract, written or verbal, with a subcontractor to do all or any part of such work comprised in such contractor's contract with the employer, such contract or subcontract shall not bar the liability of the employer under this act for injury caused to an employé of such contractor or subcontractor by any defect in the condition of the ways, works, machinery or plant if the defect arose or had not been discovered and remedied through the negligence of the employer or some one entrusted by him with the duty of seeing that they were in proper condition. This paragraph shall apply only to actions arising under section one.

4. Application of Act.—The provisions of paragraphs one, two and three shall apply to any claim for the death of an employé arising under an act entitled "An act to provide for the recovery of damages in cases where the death of a person is caused by wrongful act, neglect or default," approved March third, eighteen hundred and forty-eight, and the amendments thereof and supplements thereto.

5. Burden of proof of willful negligence.—In all actions at law brought pursuant to section I of this act, the burden of proof to establish willful negligence in the injured employé shall be upon the defendant.

6. Claim for legal services or disbursements—Approval.—No claim for legal services or disbursements pertaining to any demand made or suit

brought under the provisions of this act shall be an enforceable lien against the amount paid as compensation, unless the same be approved in writing by the judge or justice presiding at the trial, or in case of settlement without trial, by the judge of the circuit court of the district in which such issue arose; provided, that if notice in writing be given the defendant of such claim for legal services or disbursements, the same shall be a lien against the amount paid as compensation, subject to determination of the amount and approval hereinbefore provided.

§ II. ELECTIVE COMPENSATION

7. Agreement to come under Act.—When employer and employé shall by agreement, either express or implied, as hereinafter provided, accept the provisions of section II of this act, compensation for personal injuries to or for the death of such employé by accident arising out of and in the course of his employment shall be made by the employer without regard to the negligence of the employer, according to the schedule contained in paragraph eleven, in all cases except when the injury or death is intentionally self-inflicted, or when intoxication is the natural and proximate cause of injury, and the burden of proof of such fact shall be upon the employer.

8. Exclusive remedy.—Such agreement shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in section II of this act, and an acceptance of all the provisions of section II of this act, and shall bind the employé himself and for compensation for his death shall bind his personal representatives, his widow and next of kin, as well as the employer, and those conducting his business during bankruptcy or insolvency.

9. Acceptance presumed—Notice of non-election.—Every contract of hiring made subsequent to the time provided for this act to take effect shall be presumed to have been made with reference to the provisions of section II of this act, and unless there be as a part of such contract an express statement in writing, prior to any accident, either in the contract itself or by written notice from either party to the other, that the provisions of section II of this act are not intended to apply, then it shall be presumed that the parties have accepted the provisions of section II of this act and have agreed to be bound thereby. In the employment of minors, section II shall be presumed to apply unless the notice be given by or to the parent or guardian of the minor.

10. Termination of contract acceptance of Act.—The contract for the operation of the provisions of section II of this act may be terminated by either party upon sixty days' notice in writing prior to any accident.

11. Compensation schedule.—Following is the schedule of compensation:

(a) For injury producing temporary disability, fifty per centum of the wages received at the time of injury, subject to a maximum compensation of ten dollars per week and a minimum of five dollars per week; provided, that if at the time of injury the employee receives wages of less than five dollars per week, then he shall receive the full amount of such wages per week. This compensation shall be paid during the period of such disability, not, however, beyond three hundred weeks.

(b) For disability total in character and permanent in quality, fifty per centum of the wages received at the time of injury, subject to a maximum

compensation of ten dollars per week and a minimum of five dollars per week; provided, that if at the time of injury the employee receives wages of less than five dollars per week, then he shall receive the full amount of wages per week. This compensation shall be paid during the period of such disability, not, however, beyond four hundred weeks.

(c) For disability partial in character but permanent in quality, the compensation shall be based upon the extent of such disability. In cases included by the following schedule the compensation shall be that named in the schedule, to wit:

For the loss of a thumb, fifty per centum of daily wages during sixty weeks.

For the loss of a first finger, commonly called index finger, fifty per centum of daily wages during thirty-five weeks.

For the loss of a second finger, fifty per centum of daily wages during thirty weeks.

For the loss of a third finger, fifty per centum of daily wages during twenty weeks.

For the loss of a fourth finger, commonly called little finger, fifty per centum of daily wages during fifteen weeks.

The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of one-half of such thumb, or finger, and compensation shall be for one-half of the periods of time above specified, and compensation for the loss of one-half of the first phalange shall be for one-fourth of the periods of time above specified.

The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; providing, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of a great toe, fifty per centum of daily wages during thirty weeks.

For the loss of one of the toes other than a great toe, fifty per centum of daily wages during ten weeks.

For the loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, fifty per centum of daily wages during one hundred and fifty weeks.

For the loss of an arm, fifty per centum of daily wages during two hundred weeks.

For the loss of a foot, fifty per centum of daily wages during one hundred and twenty-five weeks.

For the loss of a leg, fifty per centum of daily wages during one hundred and seventy-five weeks.

For the loss of an eye, fifty per centum of daily wages during one hundred weeks.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability, to be compensated according to the provisions of clause (b).

In all other cases in this class, or where the usefulness of a member or any

physical function, is permanently impaired, the compensation shall bear such relation to the amounts stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule. Should the employer and employee be unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, the amount of compensation shall be settled according to the provisions of paragraph twenty hereof.

The amounts specified in this clause are all subject to the same limitations as to maximum and minimum as are stated in clause (a).

In case of the death of a person from any cause other than the accident, during the period of payments for permanent injury, the remaining payments shall be paid to his or her dependents, according to the provisions of paragraph twelve of this act, or, if no dependents, the remaining amount due, but not exceeding one hundred dollars, shall be paid in a lump sum to the proper person for funeral expenses.

12 [as amended by Laws 1914, c. 244]. Death benefits—Dependents.—In case of death compensation shall be computed, but not distributed, on the following basis:

For one dependent, thirty-five per centum of wages.

For two dependents, forty per centum of wages.

For three dependents, forty-five per centum of wages.

For four dependents, fifty per centum of wages.

For five dependents, fifty-five per centum of wages.

For six or more dependents, sixty per centum of wages.

The term "dependents" shall apply to and include any or all of the following who are dependent upon the deceased at the time of accident or death, namely: husband, wife, parents, stepparents, grandparents, children, stepchildren, grandchildren, posthumous child, illegitimate children, brothers, sisters, half brothers, half sisters. Legally adopted children shall, in every particular, be considered as natural children; provided, however, that dependency shall be presumed as to a widow who was living with her husband at the time of his decease, and children under the age of eighteen years; stepchildren and illegitimate children shall be presumed to be dependent when they were part of the decedent's household at the time of his death. Every provision of this act applying to one class shall be equally applicable to the other. Should any dependent of a deceased employé die during the period covered by such weekly payments, or should the widow of a deceased employé remarry during such period, the right of such dependent or of such widow to compensation under this section shall cease.

Compensation shall be computed upon the foregoing basis. Distribution shall be made among dependents, if more than one, according to the order of the judge of the Court of Common Pleas, who shall, when applied to for that purpose, determine, upon the facts being presented to him, the proportion to be paid to or on behalf of each dependent according to the relative dependency. Payment on behalf of infants shall be made to the surviving parent, if any.

If death results from the accident whether there be dependents or not, expenses of last sickness and burial, the cost of burial however not to exceed one hundred dollars.

In computing compensation to orphans or other children, only those under eighteen years of age shall be included, and only during the period in which

they are under that age, at which time payment on account of such child shall cease; provided, however, that payments to such physically or mentally deficient children as are for such reason dependent shall continue during the full term of compensation payment.

The compensation in case of death shall be subject to a maximum compensation of ten dollars per week and a minimum of five dollars per week; provided, that if at the time of the injury the employé receives wages of less than five dollars per week, then the compensation shall be the full amount of such wages per week. This compensation shall be paid during three hundred weeks.

Compensation under this schedule shall not apply to alien dependents not residents of the United States.

13. Conditions of compensation.—No compensation shall be allowed for the first two weeks after the injury received, except as provided by paragraph fourteen, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in paragraph fifteen.

14. Medical and hospital services.—During the first two weeks after the injury the employer shall furnish reasonable medical and hospital services and medicines, as and when needed, not to exceed fifty dollars in value, unless the employee refuses to allow them to be furnished by the employer.

14. (a) Consecutive compensation.—Compensation for all classes of injuries shall run consecutively and not concurrently, as follows: First two weeks, medical and hospital services and medicines, as provided in paragraph fourteen. After the first two weeks, compensation during temporary disability. Following both, either or none of the above, compensation consecutively for each permanent injury. Following any or all or none of the above, if death results from the accident, expenses of last sickness and burial. Following which compensation to dependents, if any. In no case shall the total number of weekly payments be more than four hundred.

15. Notice of injury.—Unless the employer shall have actual knowledge of the occurrence of the injury, or unless the employé, or some one on his behalf, or some of the dependents, or some one on their behalf, shall give notice thereof to the employer within fourteen days of the occurrence of the injury, then no compensation shall be due until such notice is given or knowledge obtained. If the notice is given, or the knowledge obtained within thirty days from the occurrence of the injury, no want, failure or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced by such want, defect or inaccuracy, and then only to the extent of such prejudice. If the notice is given, or the knowledge obtained within ninety days, and if the employé or other beneficiary, shall show that his failure to give prior notice was due to his mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation or deceit of another person, or to any other reasonable cause or excuse, then compensation may be allowed, unless, and then to the extent only that the employer shall show that he was prejudiced by failure to receive such notice. Unless knowledge be obtained, or notice given, within ninety days after the occurrence of the injury, no compensation shall be allowed.

16. Same—Service and requisites.—The notice referred to may be served personally upon the employer, or upon any agent of the employer upon whom a summons may be served in a civil action, or by sending it through the

mail to the employer at the last known residence or business place thereof within the State, and shall be substantially in the following form:

To (Name of Employer):

You are hereby notified that a personal injury was received by (name of employé injured), who was in your employ at (place) while engaged as (nature of employment), on or about the _____ day of _____, nineteen hundred and _____, and that compensation will be claimed therefor.

Signed, _____.

but no variation from this form shall be material if the notice is sufficient to advise the employer that a certain employé, by name, received an injury in the course of his employment on or about a specified time, at or near a certain place. Notice served at the office of, or on the person who was the employé's immediate superior, shall be a compliance with this act.

17. Medical examination.—After an injury, the employé, if so requested by his employer, must submit himself for examination at some reasonable time and place within the State, and as often as may be reasonably requested, to a physician or physicians authorized to practice under the laws of this State. If the employé requests, he shall be entitled to have a physician or physicians of his own selection present to participate in such examination. The refusal of the employé to submit to such examination shall deprive him of the right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect of the period of suspension.

18. Settlement of controversies.—In case of a dispute over, or failure to agree upon a claim for compensation between employer and employé, or the dependents of the employé, either party may submit the claim, both as to questions of fact, the nature and effect of the injuries, and the amount of compensation therefor according to the schedule herein provided, to the judge of the court of common pleas of such county as would have jurisdiction in a civil case, or where there is more than one judge of said court, then to either or any of said judges of such court, which judge is hereby authorized to hear and determine such disputes in a summary manner, and his decision as to all questions of fact shall be conclusive and binding.

19. Payment where no executor or administrator.—In case of death, where no executor or administrator is qualified, the said judge shall, by order, direct payment to be made to such person as would be appointed administrator of the estate of such decedent upon like terms as to bond for the proper application of compensation payments as are required of administrators.

20. Procedure in case of dispute.—Procedure in case of dispute shall be as follows: Either party may present a petition to said judge setting forth the names and residences of the parties and the facts relating to employment at the time of injury, the injury in its extent and character, the amount of wages received at the time of injury, the knowledge of the employer or notice of the occurrence of said injury, and such other facts as may be necessary and proper for the information of the said judge, and shall state the matter or matters in dispute and the contention of the petitioner with reference thereto. This petition shall be verified by the oath or affirmation of the petitioner. Proceedings on behalf of an infant shall be instituted and executed by a guardian, and payment, if any, shall be made to such guardian.

Upon the presentation of such petition the same shall be filed with the clerk of the Court of Common Pleas, and the judge shall by order fix a time and place for the hearing thereof, not less than three weeks after the date of the filing of said petition. A copy of said petition and order shall be served as summons in a civil action and may be served within six days thereafter upon the adverse party. Within seven days after the service of such notice the adverse party shall file an answer to said petition, unless the court for good cause shall grant further time, which shall admit or deny the substantial averments of the petition, and shall state the contention of the defendant with reference to the matters in dispute as disclosed by the petition. The answer shall be verified in like manner as required for a petition. Within thirty days after the final hearing the judge of the Court of Common Pleas shall file his determination.

At the time fixed for hearing or any adjournment thereof the said judge shall hear such witnesses as may be presented by each party, and in a summary manner decide the merits of the controversy. This determination shall be filed in writing with the clerk of the Common Pleas Court, and judgment shall be entered thereon in the same manner as in causes tried in the Court of Common Pleas, and shall contain a statement of facts as determined by said judge. The employer may once every month file receipt of payment, verified by affidavit that the receipts are accurate and true, with the clerk of the court, which shall be entered in satisfaction of the judgment to the extent of such payments. Subsequent proceedings thereon shall only be for the recovery of moneys thereby determined to be due, provided that nothing herein contained shall be construed as limiting the jurisdiction of the Supreme Court to review questions of law by certiorari. Costs may be awarded by said judge in his discretion, and when so awarded the same costs shall be allowed, taxed and collected as are allowed, taxed and collected for like services in the Common Pleas Court.

No agreement between the parties for a lesser sum than that which may be determined by the judge of the Court of Common Pleas to be due, shall operate as a bar to the determination of a controversy upon its merits, or to the award of a larger sum, if it shall be determined by the said judge that the amount agreed upon is less than the injured employee or his dependents are properly entitled to receive.

21. Commutation to lump sum.—The compensation herein provided may be commuted by said Court of Common Pleas, at its present value when discounted at five per centum simple interest, upon application of either party, with due notice to the other, if it appear that such commutation will be for the best interest of the employee or the dependents of the deceased employee, or that it will avoid undue expense or undue hardship to either party, or that such employee or dependent has removed or is about to remove from the United States, or that the employer has sold or otherwise disposed of the greater part of his business or assets.

In determining whether the commutation asked for will be for the best interest of the employee or the dependents of the deceased employee, or that it will avoid undue expense or undue hardship to either party, the judge of the Court of Common Pleas will constantly bear in mind that it is the intention of this act that the compensation payments are in lieu of wages, and are to be received by the injured employee or his dependents in the same manner in

which wages are ordinarily paid. Therefore, commutation is a departure from the normal method of payment and is to be allowed only when it clearly appears that some unusual circumstances warrant such a departure. Commutation shall not be allowed for the purpose of enabling the injured employee, or the dependents of a deceased employee, to satisfy a debt, or to make payment to physicians, lawyers or any other persons.

When any proceedings have been taken under the provisions of paragraph twenty or paragraph twenty-one of this act, the judge of the Court of Common Pleas shall, as a part of his determination and order, either for payment or for commutation of payment, settle and determine the amount of compensation to be paid by the injured employee or his dependents, on behalf of whom such proceedings are instituted, to his legal adviser or advisers, and it shall be unlawful for any lawyer, or other person acting in that behalf, to ask for, contract for or receive any larger sum than the amount so fixed; and in the order determining weekly payments where no commutation is made, the judge shall also determine the amount to be paid per week from the compensation payment on account of the legal fee thus awarded, and it shall be unlawful for the legal adviser, or other person acting in that behalf, to ask for, contract for or receive a larger sum per week than the allowance thus determined. Violation of the restrictions contained in this clause shall constitute contempt of court and shall be punished accordingly.

An agreement or award of compensation may be modified at any time by a subsequent agreement, or at any time after one year from the time when the same became operative, it may be reviewed upon the application of either party on the ground that the incapacity of the injured employee has subsequently increased or diminished. In such case the provisions of paragraph seventeen with reference to medical examination shall apply.

21. (a) Payment to trustee.—At any time after the entry of the award, a sum equal to all future installments of compensation may (where death or the nature of the injury renders the amount of future payments certain) by leave of court, be paid by the employer to any savings bank, trust company or life insurance company in good standing and authorized to do business in this State and having an office in the county in which the award was entered, and such sum, together with all interest thereon, shall thereafter be held in trust for the employee or the dependents of the employee, who shall have no further recourse against the employer. The payment of such sum by the employer, evidenced by the receipt of the trustee noted upon the docket of the clerk of the court, shall operate as a satisfaction of said award as to the employer. Payments from said fund shall be made by the trustee in the same amounts and at the same times as are herein required of the employer until said fund and interest shall be exhausted. In the appointment of the trustee, preference shall be given, in the discretion of the court, to the choice of the employee or the dependents of the deceased employee. The expense of administration of such trust shall be fixed by the court and paid by the employer.

22. Preference of compensation claims—Nonassignability.—The right of compensation granted by this act shall have the same preference against the assets of the employer as is now or may hereafter be allowed by law for a claim for unpaid wages for labor. Claims or payments due under this act shall not be assignable, and shall be exempt from all claims of creditors and from levy, execution or attachment.

§ III. GENERAL PROVISIONS

23. Definitions—Contracting out—Injury caused by third party.—

For the purposes of this act, willful negligence shall consist of (1) deliberate act or deliberate failure to act, or (2) such conduct as evidences reckless indifference to safety, or (3) intoxication, operating as the proximate cause of injury.

Wherever in this act the singular is used the plural shall be included; where the masculine gender is used, the feminine and neuter shall be included.

Employer is declared to be synonymous with master and includes natural persons, partnerships and corporations; employé is synonymous with servant and includes all natural persons who perform service for another for financial consideration, exclusive of casual employments.

Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot.

No agreement, composition or release of damages made before the happening of any accident, except the agreement defined in section two of this act, shall be valid or shall bar a claim for damages for the injury resulting therefrom, and any such agreement, other than that defined in section two herein, is declared to be against the public policy of this State. The receipt of benefits from any association, society or fund to which the employee shall have been a contributor shall not bar the recovery of damages by action at law or the recovery of compensation under section two hereof.

Where a third person or corporation is liable to the employee or his dependents for an injury or death, the existence of a right of compensation from the employer under this statute shall not operate as a bar to the action of the employee or his dependents, nor be regarded as establishing a measure of damage therein. However, in event that the employee or his dependents shall recover from the said third person or corporation, a sum equivalent to or greater than the total compensation payments for which the employer is liable under this statute, the employer shall be released thereby from the obligation of compensation. If, however, the sum so recovered from the third person or corporation is less than the total of compensation payments, the employer shall be liable only for the difference. The obligation of the employer under this statute to make compensation shall continue until the payment, if any, by such third person or corporation is made. Such employer shall file with the third person or corporation so liable, at any time prior to payment, a statement of the compensation agreement or award between himself and his employee, or the dependents of the employee, and the employer shall thereafter be entitled to receive from such third person or corporation, upon the payment of any amount in release or in judgment by the third person or corporation on account of his or its liability to the injured employee or his dependents, a sum equivalent to the amount of compensation payments which the employer has theretofore paid to the injured employee or his dependents, which payments shall be deducted by the third person or corporation from the sum paid in release or judgment to the injured employee or his dependents.

Wherever in section two of this act the term "wages" is used, it shall be construed to mean the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, and shall not include gratuities received from the employer or others, nor shall it include

board, lodging or similar advantages received from the employer, unless the money value of such advantages shall have been fixed by the parties at the time of hiring. Where prior to the accident the rate of wages is fixed by the output of the employee, his weekly wages shall be taken to be six times his average daily earnings for a working day of ordinary length, excluding overtime. This rate of weekly wages shall be calculated by dividing the total value of the employee's output during the actual number of full working days during the preceding six months, by the number of days the workman was actually employed. All parts of this calculation shall refer to employment by the same employer.

In case of personal injuries or death all claims for compensation on account thereof shall be forever barred unless within one year after the accident the parties shall have agreed upon the compensation payable under this act, or unless within one year after the accident one of the parties shall have filed a petition for adjudication of compensation as provided herein.

24. Constitutionality.—In case for any reason any paragraph or any provision of this act shall be questioned in any court and shall be held to be unconstitutional or invalid, the same shall not be held to affect any other paragraph or provision of this act, except that sections I and II are hereby declared to be inseparable, and if either section be declared void or inoperative in an essential part, so that the whole of such section must fall, the other section shall fall with it and not stand alone. Section I of this act shall not apply in cases where section II becomes operative in accordance with the provisions thereof, but shall apply in all other cases, and in such cases shall be in extension of the common law.

25. Actions for negligence retained.—Every right of action for negligence, or to recover damages for injuries resulting in death, existing before this act shall take effect, is continued, and nothing in this act contained shall be construed as affecting any such right of action, nor shall the failure to give the notice provided for in section II, paragraph fifteen of this act, be a bar to the maintenance of a suit upon any right of action existing before this act shall take effect.

26. Repealing clause.—All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

27. When effective.—This act shall take effect on the fourth day of July next succeeding its passage and approval.

Approved April 4, 1911. Amendments as per chapter 174, Laws 1913, approved and effective April 1, 1913.

SUPPLEMENTS AND FURTHER PROVISIONS.

Chapter 368, Laws of 1911

A Supplement to an act entitled "An Act prescribing the liability of an employer to make compensation for injuries received by an employé in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, one thousand nine hundred and eleven.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. Present contracts of hiring presumed subject to Act.—Every contract of hiring, verbal, written or implied from circumstances, now in opera-

tion or made or implied prior to the time limited for the act to which this act is a supplement to take effect, shall, after this act takes effect, be presumed to continue subject to the provisions of section two of the act to which this act is a supplement, unless either party shall, prior to accident, in writing, notify the other party to such contract that the provisions of section two of the act to which this act is a supplement are not intended to apply.

2. When effective.—This act shall take effect on the fourth day of July next succeeding its passage and approval.

Approved May 2, 1911.

Chapter 156, Laws of 1912

An Act requiring reports of industrial accidents to be made to the Department of Labor.

Be it enacted by the Senate and General Assembly of the State of New Jersey :

1. Report of accident by employer to commissioner of labor.—Upon the happening of any accident in any employment of labor in this State, the result of which shall be to prevent the injured person or persons from resuming work within two weeks after the happening thereof, the employer of such injured person or persons shall report, in writing, to the Commissioner of Labor the time, place and cause of the said accident, as nearly as the same may be fairly ascertained, the extent of injuries received and such other facts as the Commissioner of Labor may, by rule or regulation, require. In case of injury not producing death, such report shall be filed within four weeks after the happening of such injury. In case of injury producing death, report shall be filed within two weeks thereafter. Such reports may be forwarded by mail, postage prepaid.

2. Same, by insurance company.—All companies engaged in casualty insurance business within the State of New Jersey shall furnish to the Commissioner of Labor a full and complete report of all accidents to the employés of any person, firm, or corporation insured by them, which prevents such injured person or persons from resuming work within two weeks after the happening of such injury, or which result in death. In case of injury not producing death, such report shall be filed within four weeks after such injuries have been reported to such insurance company, or such insurance company has otherwise gained knowledge thereof. In case of injury producing death, such report shall be filed within two weeks after such death has been reported to such insurance company, or such insurance company has otherwise gained knowledge thereof. Such reports shall state the time, place and cause of injury, as nearly as the same may be ascertained, and the extent thereof, and such other and further information as the Commissioner of Labor may, by rule or regulation, require. Such notice may be sent by mail, postage prepaid.

3. Reports to be private.—The reports filed with the Commissioner of Labor, in accordance with the provisions of this act, shall not be made public, and shall not be opened to inspection unless, in the opinion of the Commissioner of Labor, some public interest shall so require, and such reports shall not be used as evidence against any employer in any suit or action at law brought by any employé for the recovery of damages, but such reports shall always be at the service and use of the Employers' Liability Commission. Reports filed in accordance with this act shall be in lieu of all other reports required to be filed pursuant to the provisions of an act entitled "An act creat-

ing the Employers' Liability Commission and prescribing its powers and duties, and requiring reports to be made by the employers of labor upon the operations of the Employers' Liability Law for the information of said commission," approved April twenty-seventh, one thousand nine hundred and eleven, and shall be considered to be compliance with the terms of the last mentioned act.

4. Failure to report—Penalty.—Any corporation, firm or person violating any of the provisions of this act shall for each offense be liable to a penalty of fifty dollars, to be recovered in an action of debt, brought by the Commissioner of Labor, in the name of the State of New Jersey. Each failure to report shall be regarded as a separate offense.

5. Repealing clause—When Act effective.—All acts and parts of acts inconsistent herewith are hereby repealed and this act shall take effect immediately.

Approved March 26, 1912.

Chapter 316, Laws of 1912

An Act requiring the clerks of courts of common pleas to file with the Commissioner of Labor copies of orders made by the judges of such courts upon matters arising under the provisions of an act entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employé in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, nineteen hundred and eleven.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. Copy of decision.—The clerk of each of the courts of common pleas in this State, whenever any order is filed by the judge of such court making a decision upon any matter arising under the provisions of an act entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employé in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, nineteen hundred and eleven, shall forthwith forward to the Commissioner of Labor of the State of New Jersey a copy of the said order, which need not be certified, without any charge being made therefor.

2. When effective.—All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect immediately.

Approved April 1, 1912.

Chapter 145, Laws of 1913

A Further Supplement to an act entitled "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, one thousand nine hundred and eleven.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. Compensation to public employés.—Every employee who shall be in the employ of the State, county, municipality or any board or commission, or

any other governing body, including boards of education, within this State, shall be compensated under and by virtue of section two to which this act is a supplement; provided, however, that no person receiving a salary greater than twelve hundred dollars per year, nor any person holding an elective office shall be entitled to compensation, and provided further, that nothing herein contained shall be construed as affecting any pension fund now or hereafter provided by law.

2. Method of payment of compensation.—When any payment shall be due under the provisions of this supplement or the act to which it is a supplement, the name of the injured employee, or in case of his death, the names of the persons to whom payment is to be made as his dependents, shall be carried upon the pay roll, and payment shall be made in the same manner and from the same source in which and from which the wages of the injured employee were paid. In event that any extraordinary payment larger than the weekly rate of compensation shall be due, such payment shall be made from any fund available for the maintenance or incidental expenses of the institution, department, board or governing body under and by which the employee was employed.

3. Repealing clause—When Act effective.—All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect immediately.

Approved March 27, 1913.

Chapter 301, Laws of 1913

A Supplement to an act entitled "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, nineteen hundred and eleven.

Be it enacted by the Senate and General Assembly of the State of New Jersey :

1. Compensation to minors — Guardian — Compromise.—In any case where an infant or minor under the age of twenty-one years shall be entitled to receive a distributive share of or compensation by virtue of the provisions of the act to which this act is a supplement, any duly authorized guardian of the person and property of and for such infant or minor appointed by the surrogate or the Orphans' Court of the county in which said infant or minor resides shall be authorized and empowered to act for such infant or minor to the same extent as a duly appointed next friend or guardian ad litem appointed by any court of law of this State and any such guardian appointed by the surrogate or Orphans' Court shall have the right and authority to compromise and make composition in behalf of such infant or minor of any disputed claim for compensation arising under the provisions of the act to which this act is a supplement; provided, the terms of such compromise or composition shall be approved by an order of the Court of Common Pleas of the county wherein such infant or minor resides upon presentation of the facts and the terms thereof to said court, before the same shall become effective.

2. When effective.—This act shall take effect immediately.

Approved April 9, 1913.

Chapter 241, Laws of 1911, Amended in Accordance with Chapter 156, Laws of 1912, and Chapter 177, Laws of 1913

An Act creating the Employers' Liability Commission and prescribing its powers and duties, and requiring reports to be made by the employers of labor upon the operations of the employers' liability law for the information of said commission.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. Employers' Liability Commission—Duties and powers.—The Governor is hereby authorized to appoint six citizens of this State, at least two of whom shall be representatives of organized labor, as an Employers' Liability Commission, who shall hold their offices for the term of two years and until their successors are appointed and qualified. They shall receive no compensation for their services, but their actual traveling expenses incurred upon the business of the commission shall be paid by the State Treasurer, upon warrants approved by the president of the said commission. The commission shall have power to choose one of their number as president and to call upon the Department of Labor for such clerical assistance as it may require in the performance of its duties, which department shall perform all clerical and statistical work heretofore performed by the commission. The expenses of the commission shall be paid from appropriations made for that purpose in any annual or supplemental appropriation bill. It shall be the duty of the commission to observe in detail, so far as possible, the operations throughout the State of the recent act of the Legislature commonly known as "The Employers' Liability Act," entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, one thousand nine hundred and eleven.

2. Meetings—Annual report.—The commission shall hold meetings, from time to time, as they may deem necessary, and shall present to each session of the Legislature a report showing the operations under the said act during the preceding year, together with any suggestions or recommendations which they may deem necessary or proper for the improvement of the said act, in order to accomplish with the greatest efficiency the purposes of the said act.

3. When effective.—This act shall take effect immediately.

Approved April 27, 1911. Amendment approved March 28, 1912, and April 1, 1913.

Chapter 59, Laws of 1915

A Supplement to an act entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, nineteen hundred and eleven.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. Payment to guardian of minor's compensation.—In case where an infant or minor under the age of twenty-one years shall be entitled to receive

a sum or sums amounting, in the aggregate, to not more than two hundred and fifty dollars as compensation for injuries, or as a distributive share by virtue of the provisions of the act to which this act is a supplement, whether heretofore or hereafter arising, the father, mother or natural guardian upon whom such infant or minor shall be dependent for support shall be authorized and empowered to receive and receipt for such moneys to the same extent as a guardian of the person and property of such infant or minor duly appointed by the surrogate of the Orphans' Court of the county in which such infant or minor resides, and the release or discharge of such father, mother or natural guardian shall be a full and complete discharge of all claims or demands of such infant or minor thereunder.

2. When effective.—This act shall take effect immediately.

Approved March 17, 1915.

Chapter 199, Laws of 1915

A Supplement to an act entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, one thousand nine hundred and eleven.

Be it enacted by the Senate and General Assembly of the State of New Jersey :

1. Execution on judgment for compensation.—Any judgment entered in the Court of Common Pleas pursuant to the provisions of section twenty of the act to which this act is a supplement, may be docketed in the Supreme Court and thenceforward, operate as a judgment recovered in that court. Upon failure to comply with the original order for compensation the court may order that the entire amount of compensation shall become due immediately and execution may issue upon proof of such failure, for the entire amount of compensation, without discount or commutation. Supplementary proceedings in aid of execution may be resorted to upon a judgment so docketed and becoming due in whole, as in any other case.

2. Repealing clause—When Act effective.—All acts and parts of acts inconsistent herewith are hereby repealed and this act shall take effect immediately.

Approved April 6, 1915.

Chapter 54, Laws of 1916

An Act creating a Workmen's Compensation Aid Bureau in the Department of Labor.

Be it enacted by the Senate and General Assembly of the State of New Jersey :

1. Workmen's Compensation Aid Bureau created.—There is hereby created within the Department of Labor a Workmen's Compensation Aid Bureau, of which the Commissioner of Labor shall be head. There shall be such inspectors, clerks, stenographers and other assistants as may be necessary, who shall be appointed by and their compensation fixed by the Commissioner of Labor; which employees shall be appointed under the civil service laws now in force in this State.

2. Duties.—In addition to the powers and duties specifically devolved by this act, the bureau shall specifically observe the operation of the act entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, one thousand nine hundred and eleven, and the supplements and amendments thereto, and likewise the operation of legislation upon the same subject matter in other States in the United States and in foreign countries, and annually submit to the Legislature a report upon the operation of the said act, together with suggestions for its improvement and the efficient and economic operation thereof.

3. Same.—Upon notice of the happening of an accident involving the injury or death of an employee, the bureau shall immediately endeavor to ascertain the cause of, and facts relating to, the accident, and preserve the same for the Court of Common Pleas, wherein such cause may be heard, when required.

4. Same—Approval of agreements.—Whenever an employer or his insurance carrier and the injured employee or his dependents, shall by agreement, signed by the injured workman or his dependents, without recourse being had to the Court of Common Pleas, settle upon and determine the compensation due to the injured employee or his dependents as provided by law, the employer shall forthwith file with the bureau a true copy of such agreement. No such agreement shall be conclusive unless approved by the bureau. If an agreement for lawful and adequate compensation approved by the bureau is not filed within twenty-one days after the date of the happening of the injury, the bureau shall, so far as practicable, endeavor to bring about a settlement of the pending claim. In event of undue delay or failure on the part of the employer or his insurance carrier promptly thereafter to make adequate compensation payments, or agreement therefor, the bureau shall have full power and authority to certify a state of facts relating to the claim to the judge of the Court of Common Pleas of the county in which the injured employee or his dependents reside, unless such injured employee or his dependents, upon their own initiative, institute proceedings for the enforcement and recovery of adequate compensation. The state of facts so certified shall be filed by the clerk of the Court of Common Pleas and shall operate as a petition filed on behalf of a petitioner. Whereupon the said judge shall, in the absence of counsel engaged by the injured employee or his dependents, assign counsel to represent the petitioner, and the matter shall thereafter proceed and be heard and determined, as other petitions are heard, under the provisions of the act entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, one thousand nine hundred and eleven. And if the court shall find that the employer, or insurance carrier, is without reasonable excuse for undue delay or failure to pay adequate compensation, then the reasonable expenses to which the injured employee or his dependents have been subjected by reason of such delay or failure, including medical and legal services and loss of working time in prosecuting his claim, shall be assessed against the em-

ployer or insurance carrier, as a penalty for such delay or failure; the compensation to be paid for legal services shall, in each and every case, be fixed and determined by order of the court.

5. Appropriation.—For the purpose of carrying into effect the provisions of this act, there is hereby appropriated the sum of twenty-five thousand dollars, when included in whole or in part in any annual or supplemental appropriation bill.

6. Repealing clause—When Act effective.—All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect immediately.

Approved March 15, 1916.

NEW YORK

WORKMEN'S COMPENSATION LAW

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WORKMEN'S COMPENSATION LAW

Chapter 816, Laws of 1913, as Re-enacted by Chapter 41, Laws of 1914, and amended by Chapter 316, Laws of 1914, constituting Chapter 67 of the Consolidated Laws, further amended by Chapters 167, 168, 615 and 674, Laws of 1915; and by Chapter 622, Laws of 1916

An Act in relation to assuring compensation for injuries or death of certain employees in the course of their employment and repealing certain sections of the labor law relating thereto, constituting chapter sixty-seven of the consolidated laws.

The People of the State of New York; represented in Senate and Assembly, do enact as follows:

ARTICLE 1.—SHORT TITLE—APPLICATION—DEFINITIONS

§ 1. **Short title.**—This chapter shall be known as the “workmen’s compensation law.”

§ 2 [*as amended by chapter 622, Laws of 1916*].¹ **Application.**—Compensation provided for in this chapter shall be payable for injuries sustained or death incurred by employees engaged in the following hazardous employments:

Group 1. The operation, including construction and repair, of railways operated by steam, electric or other motive power, street railways, and incline railways, but not their construction when constructed by any person other than the company which owns or operates the railway, including work of express, sleeping, parlor and dining car employees on railway trains.

Group 2. Construction, *repair* and operation of railways not included in group one.

Group 3. The operation, including construction and repair, of car shops, machine shops, steam and power plants, and other works for the purposes of any such railway, or used or to be used in connection with it when operated, constructed or repaired by the company which owns or operates the railway.

Group 4. The operation, including construction and repair, of car shops, machine shops, steam and power plants, not included in group three.

Group 5. The operation, including construction and repair, of telephone lines and wires for the purposes of the business of a telephone company, or used or to be used in connection with its business, when constructed or operated by the company.

Group 6. The operation, including construction and repair, of telegraph lines and wires for the purposes of the business of a telegraph company, or used or to be used in connection with its business, when constructed or operated by the company.

Group 7. Construction *or repair* of telegraph and telephone lines not included in groups five and six.

Group 8. The operation, within or without the state, including repair, of vessels other than vessels of other states or countries used in interstate

¹ The hazardous industries added to the various groups in this section by chapter 622, Laws of 1916, are printed in italics.

or foreign commerce, when operated or repaired by the company; *marine wrecking*.

Group 9. Shipbuilding, including construction and repair in a shipyard or elsewhere, not included in group eight.

Group 10. Longshore work, including the loading or unloading of cargoes or parts of cargoes of grain, coal, ore, freight, general merchandise, lumber or other products or materials, or moving or handling the same on any dock, platform or place, or in any warehouse or other place of storage.

Group 11. Dredging, subaqueous or caisson construction or *repair*, and pile driving.

Group 12. Construction, installation, *repair* or operation of electric light and electric power lines, dynamos, or appliances, and power transmission lines.

Group 13. Paving; *road-building, curb and sidewalk construction or repair*; sewer and subway construction or *repair*, work under compressed air, excavation, tunneling and shaft sinking, well digging, laying and repair of underground pipes, cables and wires, not included in other groups; *street cleaning, ashes, garbage or snow removal; operation of water works*.

Group 14. Lumbering; logging, river-driving, rafting, booming, saw mills, *bark mills*; shingle mills, lath mills, *lumber yards*; manufacture of veneer and of excelsior; manufacture of *barrels, kegs, vats, tubs*, staves, spokes, or headings.

Group 15. Pulp and paper mills.

Group 16. Manufacture of furniture, interior woodwork, organs, pianos, piano actions, canoes, small boats, coffins, wicker and rattan ware; upholstery; manufacture of mattresses or bed springs.

Group 17. Planing mills, sash and door factories, manufacture of wooden and corrugated paper boxes, cheese boxes, mouldings, window and door screens, window shades, carpet sweepers, wooden toys, *wooden articles* and wares or baskets; *cork cutting*.

Group 18. Mining; reduction of ores and smelting; preparation of metals or minerals; *oil and gas wells*.

Group 19. Quarries; sand, shale, clay or gravel pits, lime kilns; manufacture of brick, tile, terra-cotta, *asbestos*, fireproofing, or paving blocks, manufacture of calcium carbide, cement, asphalt or paving material; *stone crushing or grinding*.

Group 20. Manufacture of glass, glass products, glassware, porcelain or pottery.

Group 21. Iron, steel or metal foundries; rolling mills; manufacture of castings, forgings, heavy engines, locomotives, machinery, safes, anchors, cables, rails, shafting, wires, tubing, pipes, sheet metal, boilers, furnaces, stoves, structural steel, iron or metal; *machine shops, including repairs*.

Group 22. Operation and repair of stationary engines and boilers, *freight and passenger elevators*, not included in other groups; *window cleaning; heating and lighting*.

Group 23. Manufacture of small castings or forgings, metal wares, instruments, utensils and articles, hardware, nails, wire goods, *screws*, bolts, metal beds, sanitary, water, gas or electric fixtures, light machines, typewriters, cash registers, adding machines, carriage mountings, bicycles, metal toys, tools, cutlery, instruments, photographic cameras and supplies, sheet

metal products, buttons; *jewelry; gold, silver and plated ware; articles of bone, ivory and shell.*

Group 24. Manufacture of agricultural implements, threshing machines, traction engines, wagons, carriages, sleighs, vehicles, automobiles, motor trucks, toy wagons, sleighs or baby carriages; *blacksmiths; horse-shoers.*

Group 25. Manufacture of explosives and dangerous chemicals, corrosive acids or salts, ammonia, gasoline, petroleum, petroleum products, celluloid, gas, charcoal, artificial ice, gun powder or ammunition; *ice harvesting, ice storage and ice distribution.*

Group 26. Manufacture of paint, color, varnish, oil, japans, turpentine, printing and other ink, printers' rollers, tar, tarred, pitched or asphalted paper.

Group 27. Distilleries, breweries; manufacture of spirituous or malt liquors, alcohol, wine, mineral water or soda waters; *bottling.*

Group 28. Manufacture of drugs and chemicals, not specified in group twenty-five, medicines, dyes, extracts, pharmaceutical or toilet preparations, soaps, candles, perfumes, non-corrosive acids or chemical preparations, fertilizers, including garbage or sewerage disposal plants; shoe blacking or polish.

Group 29. Milling; manufacture of cereals or cattle foods, warehousing; *storage of all kinds and storage for hire; operation of grain elevators.*

Group 30. Packing houses, *meat markets,* abattoirs, manufacture or preparation of meats or meat products or glue, *gelatine, paste or wax.*

Group 31. Tanneries.

Group 32. *Furriers;* manufacture of leather goods and products, belting, saddlery, harness, trunks, valises, boots, shoes, gloves, umbrellas, rubber goods, rubber shoes, tubing, tires or hose.

Group 33. Canning or preparation of fruit, vegetables, fish or food stuffs; pickle factories and sugar refineries; *manufacture of dairy products.*

Group 34. Bakeries, including manufacture of crackers and biscuits, manufacture of confectionery, spices or condiments.

Group 35. Manufacture of tobacco, cigars, cigarettes or tobacco products.

Group 36. Manufacture of cordage, ropes, fibre, brooms or brushes; *manna or hemp products.*

Group 37. Flax mills; manufacture of textiles or fabrics, spinning, weaving and knitting manufactories; manufacture of yarn, thread, hosiery, cloth, blankets, carpets, canvas, bags, shoddy or felt.

Group 38. Manufacture of men's or women's clothing, white wear, shirts, collars, corsets, hats, caps, furs or robes, *or other articles from textiles or fabrics.*

Group 39. Power laundries; dyeing, cleaning or bleaching.

Group 40. Printing, *engraving,* photo-engraving, stereotyping, electrotyping, lithographing, embossing; *manufacture of moving picture machines and films;* manufacture of stationery, paper, cardboard boxes, bags, or wall-paper; and book-binding.

Group 41. The operation, otherwise than on tracks, on streets, highways, or elsewhere of cars, trucks, wagons or other vehicles, and rollers and engines, propelled by steam, gas, gasoline, electric, mechanical or other power or drawn by horses or mules, *public garages, livery, boarding or sales stables; movers of all kinds.*

Group 42. Stone cutting or dressing; marble works; manufacture of artificial stone; steel building and bridge construction *or repair*; installation *or repair* of elevators, fire escapes, boilers, engines or heavy machinery; brick-laying, tile-laying, mason work, stone-setting, concrete work, plastering; and manufacture of concrete blocks; structural carpentry; painting, *papering, picture hanging, glazing*, decorating or renovating; sheet metal work; roofing; construction, repair and demolition of buildings, bridges *and other structures; salvage of buildings or contents*; plumbing, sanitary *lighting* or heating *installation or repair*; installation and covering of pipes or boilers; *junk dealers*.

Group 43. Any employment enumerated in the foregoing groups and carried on by the state or a municipal corporation or other subdivision thereof, notwithstanding the definition of the term "employment" in subdivision five of section three of this chapter.

Any employer not carrying on one of the employments enumerated in this section, or who carrying on one of such employments has in his employ an employee not included within the term "employee" as defined by section three of this chapter, and the employees of any such employer may, by their joint election, elect to become subject to the provisions of this chapter in the manner hereinafter provided. Such election on the part of the employer shall be made by posting notices thereof about the place where the workmen are employed, in a manner to be prescribed by rules to be adopted by the commission, and by filing with the commission a written statement, in a form to be prescribed by the commission, to the effect that he accepts the provisions of this chapter and that he adopts subject to the approval of the commission one of the methods of securing compensation to his employees prescribed in section fifty of this chapter which, when so filed with and approved by the commission as to form and method of securing compensation shall operate to subject him to the provisions of this chapter and of all acts amendatory thereof for the period of one year from the date of such approval, and thereafter without further act on his part for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or any succeeding year, file with the commission a notice in writing that he withdraws his election.

Any employee in the service of any such employer shall be deemed to have accepted, and shall be subject to the provisions of this chapter and any act amendatory thereof, if, at the time of the accident for which liability is claimed, the employer charged with such liability has not withdrawn his election and the employee shall not at the time of entering into his contract of hire have given to his employer notice in writing that he elects not to be subject to the provisions of this chapter and filed a copy thereof with the commission, or in the event that such contract for hire was made in advance of the election of the employer, such employee shall not have given to his employer and filed with the commission within twenty days after such election notice in writing that he elects not to be subject to such provisions.

A minor employee shall be deemed *sui juris* for the purpose of making such an election.

The rights and remedies, benefits and liabilities of an employer or employee so electing to become subject to the provisions of this chapter shall thereupon become the same as they would have been had they been engaged in one of the occupations or employments enumerated herein and the words

employer or employee wherever they appear in this chapter shall be construed as including an employer or employee who has so elected to become subject to its provisions.

§ 3 [as amended by chapter 622, Laws of 1916]. Definitions.—As used in this chapter, 1. "Hazardous employment" means a work or occupation described in section two of this chapter.

2. "Commission" means the state industrial commission, as constituted by this chapter.

3. "Employer," except when otherwise expressly stated, means a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation, employing workmen in hazardous employments including the state and a municipal corporation or other political subdivision thereof.

4. "Employee" means a person engaged in one of the operations enumerated in section two or who is in the service of an employer whose principal business is that of carrying on or conducting a hazardous employment upon the premises or at the plant, or in the course of his employment away from the plant of his employer; and shall not include farm laborers or domestic servants.

5. "Employment" includes employment only in a trade, business or occupation carried on by the employer for pecuniary gain, except where the employer and his employees have by their joint election elected to become subject to the provisions of this chapter as provided in section two.

6. "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this chapter, and includes funeral benefits provided therein.

7. "Injury" and "personal injury" mean only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally and unavoidably result therefrom.

8. "Death" when mentioned as a basis for the right to compensation means only death resulting from such injury.

9. "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including the reasonable value of board, rent, housing, lodging or similar advantage received from the employer.

10. "State fund" means the state insurance fund provided for in article five of this chapter.

11. "Child" shall include a posthumous child and a child legally adopted prior to the injury of the employee; and a step-child dependent upon the deceased.

12. "Insurance carrier" shall include the state fund, stock corporations or mutual associations with which employers have insured, and employers permitted to pay compensation directly under the provisions of subdivision three of section fifty.

13. "Manufacture," "construction," "operation" and "installation" shall include "repair," "demolition" and "alteration."

ARTICLE 2.—COMPENSATION

§ 10. Liability for compensation.—Every employer subject to the provisions of this chapter shall pay or provide as required by this chapter compensation according to the schedules of this article for the disability or death

of his employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of his employment, without regard to fault as a cause of such injury, except where the injury is occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty. Where the injury is occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty, neither the injured employee nor any dependent of such employee shall receive compensation under this chapter.

§ 11 [as amended by chapter 622, Laws of 1916]. Alternative remedy.—The liability of an employer prescribed by the last preceding section shall be exclusive and in place of any other liability whatsoever, to such employee, his personal representatives, husband, parents, dependents or next of kin, or anyone otherwise entitled to recover damages, at common law or otherwise on account of such injury or death, except that if an employer fail to secure the payment of compensation for his injured employees and their dependents as provided in section fifty of this chapter, an injured employee, or his legal representative in case death results from the injury, may, at his option, elect to claim compensation under this chapter, or to maintain an action in the courts for damages on account of such injury; and in such an action it shall not be necessary to plead or prove freedom from contributory negligence nor may the defendant plead as a defense that the injury was caused by the negligence of a fellow servant nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

§ 12. Compensation not allowed for first two weeks.—No compensation shall be allowed for the first fourteen days of disability, except the benefits provided for in section thirteen of this chapter.

§ 13. Treatment and care of injured employés.—The employer shall promptly provide for an injured employee such medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus as may be required or be requested by the employee, during sixty days after the injury. If the employer fail to provide the same, the injured employee may do so at the expense of the employer. The employee shall not be entitled to recover any amount expended by him for such treatment or services unless he shall have requested the employer to furnish the same and the employer shall have refused or neglected to do so. All fees and other charges for such treatment and services shall be subject to regulation by the commission as provided in section twenty-four of this chapter, and shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living.

§ 14. Weekly wages basis of compensation.—Except as otherwise provided in this chapter, the average weekly wages of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation or death benefits, and shall be determined as follows:

1. If the injured employee shall have worked in the employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the

average daily wage or salary which he shall have earned in such employment during the days when so employed;

2. If the injured employee shall not have worked in such employment during substantially the whole of such year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or in a similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed;

3. If either of the foregoing methods of arriving at the annual average earnings of an injured employee cannot reasonably and fairly be applied, such annual earnings shall be such sum as, having regard to the previous earnings of the injured employee and of other employees of the same or most similar class, working in the same or most similar employment in the same or neighboring locality, shall reasonably represent the annual earning capacity of the injured employee in the employment in which he was working at the time of the accident;

4. The average weekly wages of an employee shall be one-fifty-second part of his average annual earnings;

5. If it be established that the injured employee was a minor when injured, and that under normal conditions his wages would be expected to increase, the fact may be considered in arriving at his average weekly wages.

§ 15 [as amended by chapter 622, Laws of 1916]. Schedule in case of disability.—The following schedule of compensation is hereby established.

1. Total permanent disability.—In case of total disability adjudged to be permanent sixty-six and two-thirds per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

2. Temporary total disability.—In case of temporary total disability, sixty-six and two-thirds per centum of the average weekly wages shall be paid to the employee during the continuance thereof, but not in excess of three thousand five hundred dollars, except as otherwise provided in this chapter.

3. Permanent partial disability.—In case of disability partial in character but permanent in quality the compensation shall be sixty-six and two-thirds per centum of the average weekly wages and shall be paid to the employee for the period named in the schedule as follows:

Thumb. For the loss of a thumb, sixty weeks.

First finger. For the loss of a first finger, commonly called index finger, forty-six weeks.

Second finger. For the loss of a second finger, thirty weeks.

Third finger. For the loss of a third finger, twenty-five weeks.

Fourth finger. For the loss of a fourth finger, commonly called the little finger, fifteen weeks.

Phalange of thumb or finger. The loss of the first phalange of the thumb or finger shall be considered to be equal to the loss of one-half of such thumb or finger, and compensation shall be one-half of the amount above specified.

The loss of more than one phalange shall be considered as the loss of the entire thumb or finger; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

Great toe. For the loss of a great toe, thirty-eight weeks.

Other toes. For the loss of one of the toes other than the great toe, sixteen weeks.

Phalange of toe. The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of said toe, and the compensation shall be one-half of the amount specified. The loss of more than one phalange shall be considered as the loss of the entire toe.

Hand. The loss of a hand, two hundred and forty-four weeks.

Arm. For the loss of an arm, three hundred and twelve weeks.

Foot. For the loss of a foot, two hundred and five weeks.

Leg. For the loss of a leg, two hundred and eighty-eight weeks.

Eye. For the loss of an eye, one hundred and twenty-eight weeks.

Loss of use. Permanent loss of the use of a hand, arm, foot, leg, eye, thumb, finger, toe, or phalange, shall be considered as the equivalent of the loss of such hand, arm, foot, leg, eye, thumb, finger, toe or phalange.

Amputations. Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand. Amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm. Amputation at or above the knee shall be considered as the loss of the leg.

The compensation for the foregoing specific injuries shall be in lieu of all other compensation, except the benefits provided in section thirteen of this chapter.

In case of an injury resulting in serious facial or head disfigurement the commission may in its discretion, make such award or compensation as it may deem proper and equitable, in view of the nature of the disfigurement, but not to exceed three thousand five hundred dollars.

Other cases. In all other cases in this class of disability, the compensation shall be sixty-six and two-thirds per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but not to exceed when combined with his decreased earnings the amount of wages he was receiving prior to the injury, and not to exceed in total the sum of three thousand five hundred dollars, except as otherwise provided in this chapter.

4. Temporary partial disability.—In case of temporary partial disability, except the particular cases mentioned in subdivision three of this section, an injured employee shall receive sixty-six and two-thirds per centum of the difference between his average weekly wages and his wage earning capacity thereafter in the same employment or otherwise during the continuance of such partial disability, but not to exceed when combined with his decreased earnings the amount of wages he was receiving prior to the injury, and not to exceed in total the sum of three thousand five hundred dollars, except as otherwise provided in this chapter.

5. Limitation.—The compensation payment under subdivisions one, two and four and under subdivision three except in case of the loss of a hand,

arm, foot, leg, or eye, shall not exceed fifteen dollars per week nor be less than five dollars per week; the compensation payment under subdivision three in case of the loss of a hand, arm, foot, leg or eye, shall not exceed twenty dollars per week nor be less than five dollars a week; provided, however, that if the employee's wages at the time of injury are less than five dollars per week he shall receive his full weekly wages.

6 [as amended by chapter 615, Laws of 1915]. Previous disability.—The fact that an employee has suffered previous disability or received compensation therefor shall not preclude him from compensation for a later injury nor preclude compensation for death resulting therefrom; but in determining compensation for the later injury or death his average weekly wages shall be such sum as will reasonably represent his earning capacity at the time of the later injury, provided, however, that an employee who is suffering from a previous disability shall not receive compensation for a later injury in excess of the compensation allowed for such injury when considered by itself and not in conjunction with the previous disability.

7. Permanent total disability after permanent partial disability.—If an employee who has previously incurred permanent partial disability through the loss of one hand, one arm, one foot, one leg, or one eye, incurs permanent total disability through the loss of another member or organ, he shall be paid, in addition to the compensation for permanent partial disability provided in this section and after the cessation of the payments for the prescribed period of weeks special additional compensation for the remainder of his life to the amount of sixty-six and two-thirds per centum of the average weekly wage earned by him at the time the total permanent disability was incurred. Such additional compensation shall be paid out of a special fund created for such purpose in the following manner: The insurance carrier shall pay to the state treasurer for every case of injury causing death in which there are no persons entitled to compensation the sum of one hundred dollars. The state treasurer shall be the custodian of this special fund and the commission shall direct the distribution thereof.

§ 16 [as amended by chapter 622, Laws of 1916]. Death benefits.—If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

1. Reasonable funeral expenses, not exceeding one hundred dollars;
2. If there be a surviving wife (or dependent husband) and no child of the deceased under the age of eighteen years, to such wife (or dependent husband) thirty per centum of the average wages of the deceased during widowhood (or dependent widowerhood) with two years' compensation in one sum, upon remarriage; and if there be surviving child or children of the deceased under the age of eighteen years, the additional amount of ten per centum of such wages for each such child until of the age of eighteen years; in case of the subsequent death of such surviving wife (or dependent husband) any surviving child of the deceased employee, at the time under eighteen years of age, shall have his compensation increased to fifteen per centum of such wages, and the same shall be payable until he shall reach the age of eighteen years; provided that the total amount payable shall in no case exceed sixty-six and two-thirds per centum of such wages. The commission may in its discretion require the appointment of a guardian for the

purpose of receiving the compensation of a minor child. In the absence of such a requirement by the commission the appointment of a guardian for such purposes shall not be necessary.

3. If there be surviving child or children of the deceased under the age of eighteen years, but no surviving wife (or dependent husband) then for the support of each such child until of the age of eighteen years, fifteen per centum of the wages of the deceased, provided that the aggregate shall in no case exceed sixty-six and two-thirds per centum of such wages.

4. If there be no surviving wife (or dependent husband) or child under the age of eighteen years or if the amount payable to surviving wife (or dependent husband) and to children under the age of eighteen years shall be less in the aggregate than sixty-six and two-thirds per centum of the average wages of the deceased, then for the support of grandchildren or brothers and sisters under the age of eighteen years, if dependent upon the deceased at the time of the accident, fifteen per centum of such wages for the support of each such person until of the age of eighteen years; and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the accident, twenty-five per centum of such wages during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed the difference between sixty-six and two-thirds per centum of such wages, and the amount payable as hereinbefore provided to surviving wife (or dependent husband) or for the support of surviving child or children.

Any excess of wages over one hundred dollars a month shall not be taken into account in computing compensation under this section. All questions of dependency shall be determined as of the time of the accident.

§ 17 [as amended by chapter 622, Laws of 1916]. Aliens.—Compensation under this chapter to aliens not residents (or about to become non-residents) of the United States or Canada, shall be the same in amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children, or, if there be no surviving wife or child or children, to surviving father or mother, or grandfather or grandmother, whom the employee has supported, either wholly or in part, for the period of one year prior to the date of the accident, and except that the commission may, at its option, or, upon the application of the insurance carrier, shall, commute all future installments of compensation to be paid to such aliens, by paying or causing to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the commission.

§ 18. Notice of injury.—Notice of an injury for which compensation is payable under this chapter shall be given to the commission and to the employer within ten days after disability, and also in case of the death of the employee resulting from such injury, within thirty days after such death. Such notice may be given by any person claiming to be entitled to compensation, or by some one in his behalf. The notice shall be in writing, and contain the name and address of the employee, and state in ordinary language the time, place, nature and cause of the injury, and be signed by him or by a person on his behalf or, in case of death, by any one or more of his dependents, or by a person on their behalf. It shall be given to the commission by sending it by mail, by registered letter, addressed to the commission

at its office. It shall be given to the employer by delivering it to him or sending it by mail, by registered letter, addressed to the employer at his or its last known place of residence; provided that, if the employer be a partnership then such notice may be so given to any one of the partners, and if the employer be a corporation, then such notice may be given to any agent or officer thereof upon whom legal process may be served, or any agent in charge of the business in the place where the injury occurred. The failure to give such notice, unless excused by the commission either on the ground that notice for some sufficient reason could not have been given, or on the ground that the state fund, insurance company, or employer, as the case may be, has not been prejudiced thereby, shall be a bar to any claim under this chapter.

§ 19. Medical examination.—An employee injured claiming or entitled to compensation under this chapter shall, if requested by the commission, submit himself for medical examination at a time, and from time to time, at a place reasonably convenient for the employee, and as may be provided by the rules of the commission. If the employee or the insurance carrier request he shall be entitled to have a physician or physicians of his own selection to be paid by him present to participate in such examination. If an employee refuse to submit himself to examination, his right to prosecute any proceeding under this chapter shall be suspended, and no compensation shall be payable, for the period of such refusal. |

§ 20 [as amended by chapter 167, Laws of 1915]. Determination of claims for compensation.—At any time after the expiration of the first fourteen days of disability on the part of an injured employee, or at any time after his death, a claim for compensation may be presented to the employer and if rejected or if within 10 days after presentation, a report containing an agreement for compensation be not made and filed with the commission as provided by this section, the claim may be presented to the commission. The commission shall have full power and authority to determine all questions in relation to the payment of claims presented to it for compensation under the provisions of this chapter. The commission shall make or cause to be made such investigations as it deems necessary, and upon application of either party, shall order a hearing, and within thirty days after a claim for compensation is submitted under this section, or such hearing closed, shall make or deny an award, determining such claim for compensation, and file the same in the office of the commission, together with a statement of its conclusions of fact and rulings of law. The commission may before making an award, require the claimant to appear before an arbitration committee appointed by it and consisting of one representative of employees, one representative of employers, and either a member of the commission or a person specially deputized by the commission to act as chairman, before which the evidence in regard to the claim shall be adduced and by which it shall be considered and reported upon. Immediately after such filing the commission shall send to the parties a copy of the decision. Upon a hearing pursuant to this section either party may present evidence and be represented by counsel. The decision of the commission shall be final as to all questions of fact, and, except as provided in section twenty-three, as to all questions of law. When a claim is presented to an employer, and the employer and employee, or in case of death, his principal dependent, enter into

an agreement for the payment of compensation therefor pursuant to this chapter, a joint report of such claim containing such agreement shall be made to the commission upon a form prepared by it and signed by the employer and employee, or in case of death his principal dependent. The commission shall examine such report and approve the same when the terms are strictly in accordance with this chapter and such approval shall constitute an award. However, the commission may make an award in the manner provided in this section in any case, and if the terms of the award vary from the joint report, the employer shall comply with the award. In case of unfair dealing or of bad faith on the part of the employer under this section, the commission may impose a penalty of not more than ten per centum of the award.

§ 20a [added by chapter 168, Laws of 1915]. Payment of moneys in advance of award by commission.—Any employer shall upon making of the agreement provided for in section twenty advance to any injured employee or to the principal dependent of a deceased employee, the payment or payments provided for in the agreement, in return for which he shall receive a receipt on a form supplied by the commission and signed by the person receiving the money, which receipt shall specifically state in what capacity the signer acted while so receiving such money; such receipt shall be forwarded to the commission within forty-eight hours after date of its issuance and the sum stated on its face shall be returned to said employer as provided in section twenty-five.

Prior to the making of said agreement or in the event of no agreement, any employer may at his option advance to any injured employee or to the principal dependent of a deceased employee any sum of money, in return for which he shall receive a receipt on a form supplied by the commission and signed by the person receiving the money, which receipt shall specifically state in what capacity the signer acted while so receiving such money; such receipt shall be forwarded to the commission within forty-eight hours after date of its issuance. Should any agreement or award be made the sum so stated on the face of the receipt shall be credited to the payment under the award or agreement and shall be repaid as hereinbefore provided. Any money so advanced shall be at the employer's risk.

§ 21. Presumptions.—In any proceeding for the enforcement of a claim for compensation under this chapter, it shall be presumed in the absence of substantial evidence to the contrary.

1. That the claim comes within the provisions of this chapter;
2. That sufficient notice thereof was given;
3. That the injury was not occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another;
4. That the injury did not result solely from the intoxication of the injured employee while on duty.

§ 22. Modification of award.—Upon its own motion or upon the application of any party in interest, on the ground of a change in conditions, the commission may at any time review any award, and, on such review, may make an award ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in this chapter, and shall state its conclusions of fact and rulings of law, and shall immediately send to the parties a copy of the award. No such review shall affect such award as regards any moneys already paid.

§ 23 [as amended by chapter 622, Laws of 1916]. Appeals from the Commission.—An award or decision of the commission shall be final and conclusive upon all questions within its jurisdiction, as against the state fund or between the parties, unless within thirty days after a copy of such award or decision has been sent to the parties, an appeal be taken to the appellate division of the supreme court of the third department. The commission may also, in its discretion, on the application of either party, certify to such appellate division of the supreme court, questions of law involved in its decision. Such appeals and the questions so certified shall be heard in a summary manner and shall have precedence over all other civil cases in such court. The commission shall be deemed a party to every such appeal, and the attorney-general, without extra compensation, shall represent the commission thereon. An appeal may also be taken to the court of appeals in all cases where the decision of the appellate division is not unanimous and by the consent of the appellate division or a judge of the court of appeals where the decision of the appellate division is unanimous in the same manner and subject to the same limitations not inconsistent herewith as is now provided in civil actions. It shall not be necessary to file exceptions to the rulings of the commission. The commission shall not be required to file a bond upon an appeal by it to the court of appeals. Otherwise such appeals shall be subject to the law and practice applicable to appeals in civil actions. Upon the final determination of such an appeal, the commission shall make an award or decision in accordance therewith.

§ 24. Costs and fees.—If the commission or the court before which any proceedings for compensation or concerning an award of compensation have been brought, under this chapter, determines that such proceedings have not been so brought upon reasonable ground, it shall assess the whole cost of the proceeding upon the party who has so brought them. Claims for legal services in connection with any claim arising under this chapter, and claims for services or treatment rendered or supplies furnished pursuant to section thirteen of this chapter, shall not be enforceable unless approved by the commission. If so approved, such claim or claims shall become a lien upon the compensation awarded, but shall be paid therefrom only in the manner fixed by the commission.

§ 25 [as amended by chapter 167, Laws of 1915]. Compensation, how payable.—Compensation under the provisions of this chapter shall be payable periodically by the employer, in accordance with the method of payment of the wages of the employee at the time of his injury or death, and shall be so provided for in any award; but the commission may determine that any payments may be made monthly or at any other period, as it may deem advisable. The state fund or insurance corporation in which an employer is insured shall, within ten days after demand by such employer and on the presentation of evidence of payment of compensation in accordance with this chapter, reimburse the employer therefor. An injured employee, or in case of death his dependents or personal representative, shall give receipts for payment of compensation to the employer paying the same and such employer shall forward receipts therefor promptly to the commission. The commission, whenever it shall so deem advisable, may commute such periodical payments to one or more lump sum payments to the injured employee or, in case of death, his dependents, provided the same shall be in the interest of justice.

§ 26 [as amended by Chapter 167, Laws of 1915, and by Chapter 622, Laws of 1916]. Enforcement of payment in default.—If payment of compensation, or an installment thereof, due under the terms of an award, be not made by the employer within ten days after the same is due, the insurance carrier shall be liable therefor and if not paid within ten days after demand by the injured employee or in case of death his dependents or by the commission, the amount of such payment shall constitute a liquidated claim for damages against the employer, the self-insurer or insurance corporation, which with an added penalty of fifty per centum may be recovered in an action to be instituted by the commission in the name of the people of the state. An employer who negligently or intentionally defaults in payment of compensation in the first instance under this chapter shall be liable to a penalty of not more than ten per centum of the amount of such compensation, notwithstanding the fact that the insurance corporation or state fund subsequently pays the compensation as provided in this section. If such default be made in the payment of an installment of compensation and the whole amount of such compensation be not due, the commission may, if the present value of such compensation be computable, declare the whole amount thereof due, and recover the amount thereof with the added penalties, as provided by this section. Any such action may be compromised by the commission or may be prosecuted to final judgment as, in the discretion of the commission, may best serve the interests of the persons entitled to receive the compensation or the benefits. Compensation recovered under this section shall be disbursed by the commission to the persons entitled thereto in accordance with the award. A penalty recovered pursuant to this section shall be paid into the state treasury, and be applicable to the expenses of the commission.

In case of default by the employer in the payment of any compensation due under an award for the period of thirty days after payment is due and payable, any party in interest may file with the county clerk for the county in which the injury occurred, a certified copy of a decision of the state industrial commission awarding compensation, or ending, diminishing or increasing compensation previously awarded, from which no appeal has been taken within the time allowed therefor, and thereupon judgment must be entered in the supreme court by the clerk of such county in conformity therewith immediately upon the filing of such decision. Such decree or judgment shall be entered in the same manner and shall have the same effect and all proceedings in relation thereto shall thereafter be the same, as though said decree or judgment had been rendered in a suit duly heard and determined by the supreme court, except that there shall be no appeal therefrom. The court upon the filing with it of a certified copy of a decision of the state industrial commission ending, diminishing or increasing compensation previously awarded, shall revoke or modify its prior decree or judgment so that it will conform to said decision. Neither the commission nor any party in interest shall be required to pay any fee to any public officer for filing or recording any paper or instrument executed in pursuance of this section.

§ 27 [as amended by chapter 622, Laws of 1916]. Depositing future payments.—If an award under this chapter requires payment of compensation by an employer or an insurance corporation in periodical payments,

and the nature of the injury makes it possible to compute the present value of all future payments with due regard for life contingencies, the commission may, in its discretion, at any time, compute and permit or require to be paid into the state fund an amount equal to the present value of all unpaid compensation for which liability exists, together with such additional sum as the commission may deem necessary for a proportionate payment of expenses of administering the fund so created, such moneys to constitute an aggregate trust fund; and thereupon such employer or insurance corporation shall be discharged from any further liability under such award and payment of the same shall be assumed by the trust fund so created.

The moneys so paid into this fund shall constitute an aggregate trust fund and shall be kept separate and apart from all other moneys of the state fund, and shall not be liable for any expenses of administration of the state fund other than the expenses involved in the administration of such trust fund.

§ 28. Limitation of right to compensation.—The right to claim compensation under this chapter shall be forever barred unless within one year after the injury, or if death result therefrom, within one year after such death, a claim for compensation thereunder shall be filed with the commission.

§ 29 [as amended by chapter 622, Laws of 1916]. Subrogation to remedies of employés.—If an employee entitled to compensation under this chapter be injured or killed by the negligence or wrong of another not in the same employ, such injured employee, or in case of death, his dependents, shall, before any suit or claim under this chapter, elect whether to take compensation under this chapter or to pursue his remedy against such other. Such election shall be evidenced in such manner as the commission may by rule or regulation prescribe. If he elect to take compensation under this chapter, the cause of action against such other shall be assigned to the state for the benefit of the state insurance fund, if compensation be payable therefrom, and otherwise to the person, association, corporation, or insurance carrier liable for the payment of such compensation, and if he elect to proceed against such other, the state insurance fund, person, association, corporation, or insurance carrier, as the case may be, shall contribute only the deficiency, if any, between the amount of the recovery against such other person actually collected, and the compensation provided or estimated by this chapter for such case. Such a cause of action assigned to the state may be prosecuted or compromised by the commission. A compromise of any such cause of action by the employee or his dependents at an amount less than the compensation provided for by this chapter shall be made only with the written approval of the commission, if the deficiency of compensation would be payable from the state insurance fund, and otherwise with the written approval of the person, association, corporation, or insurance carrier liable to pay the same. Wherever an employee is killed by the negligence or wrong of another not in the same employ and the dependents of such employee entitled to compensation under this chapter are minors, such election to take compensation and the assignment of the cause of action against such other and such notice of election to pursue a remedy against such other shall be made by such minor, or shall be made on behalf of such minor by a parent of such minor, or by his or her duly appointed guardian, as the commission may determine by rule in each case.

§ 30. Revenues or benefits from other sources not to affect compensation.—No benefits, savings or insurance of the injured employee, independent of the provisions of this chapter, shall be considered in determining the compensation or benefits to be paid under this chapter except that, in case of the death of an employee of the state, a municipal corporation or any other political subdivision of the state, any benefit payable under a pension system which is not sustained in whole or in part by the contributions of the employee, may be applied toward the payment of the death benefit provided by this chapter.

§ 31. Agreement for contribution by employé void.—No agreement by an employee to pay any portion of the premium paid by his employer to the state insurance fund or to contribute to a benefit fund or department maintained by such employer or to the cost of mutual insurance or other insurance, maintained for or carried for the purpose of providing compensation as herein required, shall be valid, and any employer who makes a deduction for such purpose from the wages or salary of any employee entitled to the benefits of this chapter shall be guilty of a misdemeanor.

§ 32. Waiver agreements void.—No agreement by an employee to waive his right to compensation under this chapter shall be valid.

§ 33. Assignments; exemptions.—Claims for compensation or benefits due under this chapter shall not be assigned, released or commuted except as provided by this chapter, and shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived. Compensation and benefits shall be paid only to employees or their dependents.

§ 34 [as amended by chapter 622, Laws of 1916]. Preferences.—The right of compensation granted by this chapter and any awards made thereunder shall have the same preference or lien without limit of amount against the assets of the employer as is now or hereafter may be allowed by law for a claim for unpaid wages for labor.

ARTICLE 3.—SECURITY FOR COMPENSATION

§ 50 [as amended by chapter 622, Laws of 1916]. Security for payment of compensation.—An employer shall secure compensation to his employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation in the state fund, or

2. By insuring and keeping insured the payment of such compensation with any stock corporation or mutual association authorized to transact the business of workmen's compensation insurance in this state. If insurance be so effected in such a corporation or mutual association the employer shall forthwith file with the commission, in form prescribed by it, a notice specifying the name of such insurance corporation or mutual association and such information regarding the policies as the commission may require.

3. By furnishing satisfactory proof to the commission of his financial ability to pay such compensation for himself, in which case the commission may, in its discretion, require the deposit with the commission of securities of the kind prescribed in section thirteen of the insurance law, in an amount to be determined by the commission, to secure his liability to pay the compensation provided in this chapter. The commission shall have the authority

to revoke its consent furnished under this section at any time for good cause shown.

If an employer fail to comply with this section, he shall be liable to a penalty during which such failure continues of an amount equal to the pro rata premium which would have been payable for insurance in the state fund for such period of non-compliance to be recovered in an action brought by the commission.

The commission may, in its discretion, for good cause shown, remit any such penalty, provided the employer in default secure compensation as provided in this section.

§ 51. Posting of notice regarding compensation.—Every employer who has complied with section fifty of this chapter shall post and maintain in a conspicuous place or places in and about his place or places of business typewritten or printed notices in form prescribed by the commission, stating the fact that he has complied with all the rules and regulations of the commission and that he has secured the payment of compensation to his employees and their dependents in accordance with the provisions of this chapter.

§ 52 [as amended by chapter 622, Laws of 1916]. Effect of failure to secure compensation.—Failure to secure the payment of compensation shall constitute a misdemeanor and have the effect of enabling the injured employee or in case of death, his dependents or legal representatives, to maintain an action for damages in the courts, as prescribed by section eleven of this chapter.

§ 53. Release from all liability.—An employer securing the payment of compensation by contributing premiums to the state fund shall thereby become relieved from all liability for personal injuries or death sustained by his employees, and the persons entitled to compensation under this chapter shall have recourse therefor only to the state fund and not to the employer. An employer shall not otherwise be relieved from the liability for compensation prescribed by this chapter except by the payment thereof by himself or his insurance carrier.

§ 54 [as amended by chapter 622, Laws of 1916]. The insurance contract.—1. Right of recourse to the insurance carrier.—Every policy of insurance covering the liability of the employer for compensation issued by a stock company or by a mutual association authorized to transact workmen's compensation insurance in this state shall contain a provision setting forth the right of the commission to enforce in the name of the people of the state of New York for the benefit of the person entitled to the compensation insured by the policy either by filing a separate application or by making the insurance carrier a party to the original application, the liability of the insurance carrier in whole or in part for the payment of such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance carrier shall to the extent thereof be a bar to the recovery against the other of the amount so paid.

2. Knowledge and jurisdiction of the employer extended to cover the insurance carrier.—Every such policy shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier;

that jurisdiction of the employer shall, for the purpose of this chapter, be jurisdiction of the insurance carrier and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer for the payment of compensation under the provisions of this chapter.

3. Insolvency of employer does not release the insurance carrier.—Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer shall not relieve the insurance carrier from the payment of compensation for injuries or death sustained by an employee during the life of such policy.

4. Limitation of indemnity agreements.—Every contract or agreement of an employer the purpose of which is to indemnify him from loss or damage on account of the injury of an employee by accidental means, or on account of the negligence of such employer or his officer, agent or servant, shall be absolutely void unless it shall also cover liability for the payment of the compensation provided for by this chapter.

5. Cancellation of insurance contracts.—No contract of insurance issued by an insurance carrier against liability arising under this chapter shall be cancelled within the time limited in such contract for its expiration until at least ten days after a notice of cancellation of such contract, on a date specified in such notice, shall be filed in the office of the commission and also served on the employer. Such notice shall be served on the employer by delivering it to him or by sending it by mail, by registered letter, addressed to the employer at his or its last known place of residence; provided that, if the employer be a partnership, then such notice may be so given to any one of the partners, and if the employer be a corporation, then the notice may be given to any agent or officer of the corporation upon whom legal process may be served. Provided, however, the right to cancellation of a policy of insurance in the state fund shall be exercised only for non-payment of premiums.

6. Insurance of working employers.—Any insurance carrier may issue policies, including with employees, employers who perform labor incidental to their occupations, such policies insuring to such employers the same compensations provided for their employees, and at the same rates; provided, however, that the estimation of their wage values, respectively, shall be reasonable and separately stated in and added to the valuation of their pay rolls upon which their premium is computed. The employer so insured shall have the same rights and remedies given an employee by this chapter.

ARTICLE 4.—STATE WORKMEN'S COMPENSATION COMMISSION

§ 62 [as amended by section 2 of chapter 674, Laws of 1915]. Expenses.—The commission may make the necessary expenditure to obtain statistical and other information to establish classifications of employments with respect to hazards and risks. The expenses of the commission, including the premiums to be paid by the state treasurer for the bond to be furnished by him, shall be paid out of the state treasury upon vouchers signed by at least two commissioners.

§ 63. Office.—The commission shall keep and maintain its principal office in the city of Albany, in rooms in the capitol assigned by the trustees of

public buildings. The office shall be supplied with necessary office furniture, supplies, books, maps, stationery, telephone connections and other necessary appliances, at the expense of the state, payable in the same manner as other expenses of the commission.

§ 64. Sessions of Commission.—The commission shall be in continuous session and open for the transaction of business during all business hours of every day excepting Sundays and legal holidays. All sessions shall be open to the public and may be adjourned, upon entry thereof in its records, without further notice. Whenever convenience of parties will be promoted or delay and expense prevented, the commission may hold sessions in cities other than the city of Albany. A party may appear before such commission and be heard in person or by attorney. Every vote and official act of the commission shall be entered of record, and the records shall contain a record of each case considered, and the award, decision or order made with respect thereto, and all voting shall be by the calling of each commissioner's name by the secretary and each vote shall be recorded as cast. A majority of the commission shall constitute a quorum. A vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the full commission so long as a majority remains.

§ 65. Powers of individual commissioners and deputy commissioners.—Any investigation, inquiry or hearing which the commission is authorized to hold or undertake may be held or taken by or before any commissioner or deputy commissioner, and the award, decision or order of a commissioner or deputy commissioner, when approved and confirmed by the commission and ordered filed in its office, shall be deemed to be the award, decision or order of the commission. Each commissioner and deputy shall, for the purposes of this chapter, have power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony. The commission may authorize any deputy to conduct any such investigation, inquiry or hearing, in which case he shall have the power of a commissioner in respect thereof.

§ 66. Powers and duties of secretary.—The secretary of the commission shall:

1. Maintain a full and true record of all proceedings of the commission, of all documents or papers ordered filed by the commission, of decisions or orders made by a commissioner or deputy commissioner, and of all decisions or orders made by the commission or approved and confirmed by it and ordered filed, and he shall be responsible to the commission for the safe custody and preservation of all such documents at its office;

2. Have power to administer oaths in all parts of the state, so far as the exercise of such power is properly incident to the performance of his duty or that of the commission;

3. Designate, from time to time, with the approval of the commission, one of the clerks appointed by the commission to exercise the powers and duties of the secretary during his absence;

4. Under the direction of the commission, have general charge of its office, superintend its clerical business, and perform such other duties as the commission may prescribe.

§ 67 [as amended by chapter 622, Laws of 1916]. Rules.—The commission shall adopt reasonable rules, not inconsistent with this chapter, regulating and providing for

1. The kind and character of notices, and the service thereof, in case of accident and injury to employees;

2. The nature and extent of the proofs and evidence, and the method of taking and furnishing the same, to establish the right to compensation;

3. The forms of application for those claiming to be entitled to compensation;

4. The method of making investigations, physical examinations and inspections;

5. The time within which adjudications and awards shall be made;

6. The conduct of hearings, investigations and inquiries;

7. The giving of undertakings by all subordinates who are empowered to receive and disburse moneys, to be approved by the attorney-general as to form and by the comptroller as to sufficiency;

8. Carrying into effect the provisions of this chapter.

9. The collection, maintenance and disbursement of the state insurance fund.

§ 68. Technical rules of evidence or procedure not required.—The commission or a commissioner or deputy commissioner in making an investigation or inquiry or conducting a hearing shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter; but may make such investigation or inquiry or conduct such hearing in such manner as to ascertain the substantial rights of the parties.

§ 69. Issue of subpoena; penalty for failure to obey.—A subpoena shall be signed and issued by a commissioner, a deputy commissioner or by the secretary of the commission and may be served by any person of full age in the same manner as a subpoena issued out of a court of record. If a person fail, without reasonable cause, to attend in obedience to a subpoena, or to be sworn or examined or answer a question or produce a book or paper, or to subscribe and swear to his deposition after it has been correctly reduced to writing, he shall be guilty of a misdemeanor.

§ 70. Recalcitrant witnesses punishable as for contempt.—If a person in attendance before the commission or a commissioner or deputy commissioner refuses, without reasonable cause, to be examined, or to answer a legal and pertinent question or to produce a book or paper, when ordered so to do by the commission or a commissioner or deputy commissioner, the commission may apply to a justice of the supreme court upon proof by affidavit of the facts for an order returnable in not less than two nor more than five days directing such person to show cause before the justice who made the order, or any other justice of the supreme court, why he should not be committed to jail. Upon the return of such order the justice shall examine under oath such person and give him an opportunity to be heard; and if the justice determine that he has refused without reasonable cause or legal excuse to be examined or to answer a legal and pertinent question, or to produce a book or paper which he was ordered to bring, he may forthwith, by warrant, commit the offender to jail, there to remain until he submits to do the act which he was so required to do or is discharged according to law.

§ 71. Fees and mileage of witnesses.—Each witness who appears in obedience to a subpoena before the commission or a commissioner or deputy commissioner, or person employed by the commission to obtain the required information, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the supreme court, which shall be audited and paid from the state treasury in the same manner as other expenses of the commission. A witness subpoenaed at the instance of a party other than the commission, a commissioner, deputy commissioner or person acting under the authority of the commission shall be entitled to fees or compensation from the state treasury, if the commission certify that his testimony was material to the matter investigated, but not otherwise.

§ 72. Depositions.—The commission may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the supreme court.

§ 73. Transcript of stenographer's minutes; effect as evidence.—A transcribed copy of the testimony, evidence and procedure or of a specific part thereof, or of the testimony of a particular witness or of a specific part thereof, on any investigation, by a stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript thereof and to have been carefully compared by him with his original notes, may be received in evidence by the commission with the same effect as if such stenographer were present and testified to the facts so certified, and a copy of such transcript shall be furnished on demand to any party upon payment of the fee provided for a transcript of similar minutes in the supreme court.

§ 74. Jurisdiction of Commission to be continuing.—The power and jurisdiction of the commission over each case shall be continuing, and it may, from time to time, make such modification or change with respect to former findings or orders relating thereto, as in its opinion may be just.

§ 75 [as re-enacted by chapter 622, Laws of 1916]. Report of commission.—Annually on or before the first day of February, the commission shall make a report to the legislature, which shall include a statement of the number of awards made by it and the causes of the accidents leading to the injuries for which the awards were made, a detailed statement of the expenses of the commission, the condition of the state insurance fund, together with any other matter which the commission deems proper to report to the legislature, including any recommendations it may desire to make.

§ 76. Commission to furnish blank forms.—The commission shall prepare and cause to be distributed so that the same may be readily available blank forms of application for compensation, notice to employers, proofs of injury or death, of medical or other attendance or treatment, of employment and wage earnings, and for such other purposes as may be required. Insured employers shall constantly keep on hand a sufficient supply of such blanks.

§ 77 [added by chapter 622, Laws of 1916]. Expenses of administering Commission.—As soon as practicable after July first, nineteen hundred and seventeen, and annually thereafter, the commission shall ascertain the total amount of its expenses incurred during the preceding fiscal year, in connection with the administration of the workmen's compensation law, and shall thereupon assess upon and collect from each insurance carrier, including the state insurance fund, the proportion of such expense that the total compensation or payments made by such carrier in such year bore to the

total compensation or payments made by all insurance carriers. The amounts so secured shall be transferred to the state treasury to reimburse it for this portion of the expense of administering this chapter.

ARTICLE 5.—STATE INSURANCE FUND

§ 90. Creation of state fund.—There is hereby created a fund to be known as "The State Insurance Fund," for the purpose of insuring employers against liability under this chapter and of assuring to the persons entitled thereto the compensation provided by this chapter. Such fund shall consist of all premiums received and paid into the fund, of property and securities acquired by and through the use of moneys belonging to the fund and of interest earned upon moneys belonging to the fund and deposited or invested as herein provided. Such fund shall be administered by the commission without liability on the part of the state beyond the amount of such fund. Such fund shall be applicable to the payment of losses sustained on account of insurance and to the payment of expenses in the manner provided in this chapter.

§ 91. State treasurer custodian of fund.—The state treasurer shall be the custodian of the state insurance fund; and all disbursements therefrom shall be paid by him upon vouchers authorized by the commission and signed by any two members thereof. The state treasurer shall give a separate and additional bond in an amount to be fixed by the governor and with sureties approved by the state comptroller conditioned for the faithful performance of his duty as custodian of the state fund. The state treasurer may deposit any portion of the state fund not needed for immediate use, in the manner and subject to all the provisions of law respecting the deposit of other state funds by him. Interest earned by such portion of the state insurance fund deposited by the state treasurer shall be collected by him and placed to the credit of the fund.

§ 92 [as amended by chapter 622, Laws of 1916]. Surplus and reserves.—Ten per centum of the premiums collected from employers insured in the fund shall be set aside by the commission for the creation of a surplus until such surplus shall amount to the sum of one hundred thousand dollars, and thereafter five per centum of such premiums, until such time as in the judgment of the commission such surplus shall be sufficiently large to cover the catastrophe hazard. The commission shall also set up and maintain reserves adequate to meet anticipated losses and carry all claims and policies to maturity, which reserves shall be computed in accordance with such rules as shall be approved by the superintendent of insurance.

§ 93 [as amended by chapter 622, Laws of 1916]. Investment of surplus or reserve.—Any of the surplus or reserve funds belonging to the state insurance fund may, pursuant to a resolution of the commission approved by the superintendent of insurance, be invested in or loaned on the pledge of any of the securities in which deposits of insurance corporations are required to be invested pursuant to section thirteen of the insurance law, or in the public stocks or bonds of any one of the United States, or in bonds and mortgages on improved unencumbered real property in this state worth fifty per centum more than the amount loaned thereon. All such securities or evidences of indebtedness shall be placed in the hands of the state treasurer who shall be the custodian thereof. He shall collect the principal and

interest thereof, when due, and pay the same into the state insurance fund. The state treasurer shall pay all vouchers drawn on the state insurance fund for the making of such investments when signed by two members of the commission, upon delivery of such securities or evidences of indebtedness to him, when there is attached to such vouchers a certified copy of the resolution of the commission authorizing the investment. The commission may, upon like resolution approved by the superintendent of insurance, sell any of such securities.

§ 94 [as amended by chapter 622, Laws of 1916]. Administration expense.—The entire expense of administering the state insurance fund shall be paid in the first instance by the state, out of moneys appropriated therefor. In the month of July, nineteen hundred and seventeen, and annually thereafter in such month, the commission shall ascertain the just amount incurred by the commission during the preceding fiscal year, in the administration of the state insurance fund, and shall refund such amount to the state treasury. If there be employees of the commission other than the commissioners themselves and the secretary whose time is devoted partly to the general work of the commission and partly to the work of the state insurance fund, and in case there is other expense which is incurred jointly on behalf of the general work of the commission and the state insurance fund, an equitable apportionment of the expense shall be made for such purpose and the part thereof which is applicable to the state insurance fund shall be chargeable thereto.

§ 95. Classification of risks and adjustment of premiums.—Employments coming under the provisions of this chapter shall be divided for the purposes of the state fund, into the groups set forth in section two of this chapter. Separate accounts shall be kept of the amounts collected and expended in respect to each such group for convenience in determining equitable rates; but for the purpose of paying compensation the state fund shall be deemed one and indivisible. The commission shall have power to rearrange any of the groups set forth in section two by withdrawing any employment embraced in it and transferring it wholly or in part to any other group, and from such employments to set up new groups at its discretion. The commission shall determine the hazards of the different classes composing each group and fix the rates of premiums therefor based upon the total payroll and number of employees in each of such classes of employment at the lowest possible rate consistent with the maintenance of a solvent state insurance fund and the creation of a reasonable surplus and reserve; and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each individual risk.

§ 96. Associations for accident prevention.—The employers in any of the groups described in section two or established by the commission may with the approval of the commission form themselves into an association for accident prevention, and may make rules for that purpose. If the commission is of the opinion that an association so formed sufficiently represents the employers in such group, it may approve such rules, and when so approved and approved by the industrial board of the labor department they shall be binding on all employers in such group. If such an approved association appoint an inspector or expert for the purpose of accident prevention, the commission may at its discretion provide in whole or in part for the payment

of the remuneration and expenses of such inspector or expert, such payment to be charged in the accounting to such group. Every such approved association may make recommendations to the commission concerning the fixing of premiums for classes of hazards, and for individual risks within such group.

§ 97 [as amended by chapter 622, Laws of 1916]. Requirements in classifying employment and fixing and adjusting premium rates.—The following requirements shall be observed in classifying employments and fixing and adjusting premium rates:

1. The commission shall keep an accurate account of the money paid in premiums by each of the several classes of employments or industries, and the disbursements on account of injuries and deaths of employees thereof, including the setting up of reserves adequate to meet anticipated losses and to carry the claims to maturity, and also, on account of the money received from each individual employer and the amount disbursed from the state insurance fund on account of injuries and death of the employees of such employer, including the reserves so set up;

2. On January first, nineteen hundred and fifteen, and every fifth year thereafter, and at such other times as the commission, in its discretion, may determine, a readjustment of the rate shall be made for each of the several groups of employment or industries and of each hazard class therein, which, in the judgment of the commission, shall have developed an average loss ratio, in accordance with the experience of the commission in the administration of the law as shown by the accounts kept as provided herein;

3. If any such accounting show an aggregate balance (deemed by the commission to be safely and properly divisible) remaining to the credit of any class of employment or industry, after the amount required shall have been credited to the surplus and reserve funds and after the payment of all awards for injury or death lawfully chargeable against the same, the commission may in its discretion credit to each individual member of such group, who shall have been a subscriber to the state insurance fund for a period of six months or more prior to the time of such readjustment, and whose premium or premiums exceed the amount of the disbursements from the fund on account of injuries or death of his employees during such period, on the instalment or instalments of premiums next due from him such proportion of such balance as the amount of his prior paid premiums sustains to the whole amount of such premiums paid by the group to which he belongs since the last readjustment of rates. In the event that any member of the group who has heretofore or shall hereafter withdraw would have become entitled to such dividend if he had remained in the fund the commission is empowered to pay the amount of the dividend to such employer.

4. If the amount of premiums collected from any employer at the beginning of any period of six months is ascertained and calculated by using the estimated expenditure of wages for the period of time covered by such premium payment as a basis, an adjustment of the amount of such premium shall be made at the end of such six months, and the actual amount of such premium shall be determined in accordance with the amount of the actual expenditure of wages for such period; and, if such wage expenditure for such period is less than the amount on which such estimated premium was collected, such employer shall be entitled to receive a refund from the state insurance fund of the difference between the amount so paid by him and the

amount so found to be actually due, or to have the amount of such difference credited on succeeding premium payments, at his option; and if such actual premium, when so ascertained, exceeds in amount a premium so paid by such employer at the beginning of such six months, such employer shall immediately upon being advised of the true amount of such premium due, forthwith pay to the treasurer of the state an amount equal to the difference between the amount actually found to be due and the amount paid by him at the beginning of such six months' period.

§ 98. Time of payment of premiums.—Except as otherwise provided in this chapter, all premiums shall be paid by every employer into the state insurance fund on or before July first, nineteen hundred and fourteen, and semi-annually thereafter, or at such other time or times as may be prescribed by the commission. The commission shall mail a receipt for the same to the employer and place the same to the credit of the state insurance fund in the custody of the state treasurer.

§ 99. Action for collection in case of default.—If an employer shall default in any payment required to be made by him to the state insurance fund, the amount due from him shall be collected by civil action against him in the name of the people of the state of New York, and it shall be the duty of the commission on the first Monday of each month after July first, nineteen hundred and fourteen, to certify to the attorney-general of the state the names and residences, or places of business, of all employers known to the commission to be in default for such payment or payments for a longer period than five days and the amount due from such employer, and it shall then be the duty of the attorney-general forthwith to bring or cause to be brought against each such employer a civil action in the proper court for the collection of such amount so due, and the same when collected, shall be paid into the state insurance fund, and such employer's compliance with the provisions of this chapter requiring payments to be made to the state insurance fund shall date from the time of the payment of said money so collected as aforesaid to the state treasurer for credit to the state insurance fund.

§ 100 [as re-enacted by chapter 622, Laws of 1916]. Withdrawal from fund.—Any employer may, upon complying with subdivision two or three of section fifty of this chapter, withdraw from the fund by turning in his insurance contract for cancellation, provided he is not in arrears for premiums due the fund and has given to the commission written notice of his intention to withdraw within thirty days before the expiration of the period for which he has elected to insure in the fund; provided that in case any employer so withdraws, his liability to assessments shall, notwithstanding such withdrawal, continue for one year after the date of such withdrawal as against all liabilities for such compensation accruing prior to such withdrawal.

§ 101. Audit of payrolls.—Every employer who is insured in the state insurance fund shall keep a true and accurate record of the number of his employees and the wages paid by him, and shall furnish to the commission, upon demand, a sworn statement of the same. Such record shall be open to inspection at any time and as often as the commission shall require to verify the number of employees and the amount of the payroll.

§ 102. Falsification of payroll.—An employer who shall wilfully misrepresent the amount of the payroll upon which the premiums chargeable

by the state insurance fund is to be based shall be liable to the state in ten times the amount of the difference between the premiums paid and the amount the employer should have paid had his payroll been correctly computed; and the liability to the state under this section shall be enforced in a civil action in the name of the state insurance fund, and any amount so collected shall become a part of such fund.

§ 103. Wilful misrepresentation.—Any person who wilfully misrepresents any fact in order to obtain insurance in the state insurance fund at less than the proper rate for such insurance, or in order to obtain payment out of such fund, shall be guilty of a misdemeanor.

§ 104. Inspections.—The commission shall have the right to inspect the plants and establishments of employers insured in the state insurance fund; and the inspectors designated by the commission shall have free access to such premises during regular working hours.

§ 105. Disclosures prohibited.—Information acquired by the commission or its officers or employees from employers or employees pursuant to this chapter shall not be opened to public inspection, and any officer or employee of the commission who, without authority of the commission or pursuant to its rules or as otherwise required by law shall disclose the same shall be guilty of a misdemeanor.

§ 106 [added by chapter 622, Laws of 1916]. Reports of state insurance fund; examination by insurance department.—The commission shall make reports to the superintendent of insurance concerning the state insurance fund at the same times and in the same manner as is required from mutual employers' liability and workmen's compensation corporations by section one hundred and ninety-two of the insurance law, and the superintendent of insurance may examine into the condition of such state insurance fund at any time, either personally or by any duly authorized examiner appointed by him, for the purpose of determining the condition of the investments and the adequacy of the reserves of such fund.

ARTICLE 6.—MISCELLANEOUS PROVISIONS.

§ 110. Penalties applicable to expenses of Commission.—All penalties imposed by this chapter shall be applicable to the expenses of the commission. When collected by the commission such penalties shall be paid into the state treasury and be thereafter appropriated by the legislature for the purposes prescribed by this section.

§ 111. Record and report of injuries by employers.—Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within ten days after the occurrence of an accident resulting in personal injury a report thereof shall be made in writing by the employer to the commission upon blanks to be procured from the commission for that purpose. Such report shall state the name and nature of the business of the employer, the location of his establishment or place of work, the name, address and occupation of the injured employee, the time, nature and cause of the injury and such other information as may be required by the commission. An employer who refuses or neglects to make a report as required by this section shall be guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars.

§ 112. Information to be furnished by employer.—Every employer shall furnish the commission, upon request, any information required by it to carry out the provisions of this chapter. The commission, a commissioner, deputy commissioner, or any person deputized by the commission for that purpose, may examine under oath any employer, officer, agent or employee. An employer or an employee receiving from the commission a blank with directions to file the same shall cause the same to be properly filled out so as to answer fully and correctly all questions therein, or if unable to do so, shall give good and sufficient reasons for such failure. Answers to such questions shall be verified under oath and returned to the commission within the period fixed by the commission therefor.

§ 113. Inspection of records of employers.—All books, records and pay-rolls of the employers showing or reflecting in any way upon the amount of wage expenditures of such employers shall always be open for inspection by the commission or any of its authorized auditors, accountants or inspectors for the purpose of ascertaining the correctness of the wage expenditure and number of men employed and such other information as may be necessary for the uses and purposes of the commission in the administration of this chapter.

§ 114. Interstate commerce.—The provisions of this chapter shall apply to employers and employees engaged in intrastate, and also in interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, except that such employer and his employees working only in this state may, subject to the approval and in the manner provided by the commission and so far as not forbidden by any act of congress, accept and become bound by the provisions of this chapter in like manner and with the same effect in all respects as provided herein for other employers and their employees.

§ 115. Penalties for false representation.—If for the purpose of obtaining any benefit or payment under the provisions of this chapter, either for himself or any other person, any person wilfully makes a false statement or representation, he shall be guilty of a misdemeanor.

§ 116. Limitation of time.—No limitation of time provided in this chapter shall run as against any person who is mentally incompetent or a minor dependent so long as he has no committee, guardian or next friend.

§ 117. Duties of commissioner of labor.—The commissioner of labor shall render to the commission any proper aid and assistance by the department of labor as in his judgment does not interfere with the proper conduct of such department.

§ 118. Unconstitutional provisions.—If any section or provision of this chapter be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the chapter as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

§ 119. Actions or causes of action pending.—This act shall not affect any action pending or cause of action existing or which accrued prior to July first, nineteen hundred and fourteen.

ARTICLE 7.—LAWS REPEALED—WHEN TO TAKE EFFECT

§ 130. **Laws repealed.**—Article fourteen-a and sections two hundred and fifteen to two hundred and nineteen-g, both inclusive, of chapter thirty-six of the laws of nineteen hundred and nine, as amended by chapter six hundred and seventy-four of the laws of nineteen hundred and ten, are hereby repealed.

§ 131. **When to take effect.**—This chapter shall take effect immediately, provided that the application of this chapter as between employers and employees and the payment of compensation for injuries to employees or their dependents, in case of death, shall take effect July first, nineteen hundred and fourteen, but payments into the state insurance fund may be made prior to July first, nineteen hundred and fourteen.

STATE INDUSTRIAL COMMISSION

Chapter 674, Laws of 1915

An Act to amend the Labor Law, establishing the State Industrial Commission, defining its powers and duties, transferring thereto the powers and duties of the Workmen's Compensation Commission and abolishing the offices of commissioner of labor and deputy commissioners of labor, the industrial board and the Workmen's Compensation Commission.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. **Amendment to Labor Law.**—Article three and article three-a of chapter thirty-six of the laws of nineteen hundred and nine, entitled "An act relating to labor, constituting chapter thirty-one of the consolidated laws" as amended by chapter five hundred and fourteen of the laws of nineteen hundred and ten, chapters five hundred and sixty-five and seven hundred and twenty-nine of the laws of nineteen hundred and eleven, chapter three hundred and eighty-two of the laws of nineteen hundred and twelve, chapter one hundred and forty-five of the laws of nineteen hundred and thirteen, and chapter one hundred and eighty-one of the laws of nineteen hundred and fourteen, are hereby amended to read as follows:

ARTICLE 3.—DEPARTMENT OF LABOR

(§ 40) **Industrial Commission created.**—There shall be a department of labor, the head of which shall be the industrial commission. The commission shall consist of five commissioners appointed by the governor by and with the advice and consent of the senate, one of whom shall be designated by the governor as chairman. Upon the appointment of a successor to the chairman the governor shall designate such successor or any member of the commission as chairman thereof. The term of office of each commissioner shall be six years, except that the term of the commissioners first appointed shall expire, one on January first, nineteen hundred and seventeen, one on January first, nineteen hundred and eighteen, one on January first, nineteen hundred and nineteen, one on January first, nineteen hundred and twenty and one on January first, nineteen hundred and twenty-one. Their successors shall be appointed for full terms of six years from the expiration of the terms of their predecessors in office. If a vacancy occurs otherwise than by

expiration of a term, it shall be filled by appointment for the unexpired term. Each commissioner shall receive an annual salary of eight thousand dollars, and shall devote his entire time to the duties of his office. Not more than three commissioners shall be members of the same political party.

The governor may remove a commissioner for inefficiency, neglect of duty or misconduct in office, giving him a copy of the charges and an opportunity of being publicly heard in person or by counsel on not less than ten days' notice. If the commissioner be removed, the governor shall file in the office of the secretary of state a complete record of his proceedings with regard to such removal and his findings thereon.

The commission may adopt a seal and require that it be used for the authentication of the commission's orders and proceedings and for such other purposes as the commission may prescribe. The court shall take judicial notice of such seal and of the signatures of the chairman and secretary of the commission.

(§ 40a) Industrial council.—(1) To advise the commission there shall be an industrial council composed of ten members appointed by the governor. Five members of the council shall be persons known to represent the interests of employees and five shall be persons known to represent the interests of employers. The governor may remove any member of the council when such member ceases to represent the interests in whose behalf he was appointed.

(2) The council shall organize by electing as chairman any person not a member of the council. The chairman shall preside at meetings of the council and may take part in its deliberations, but shall have no vote. The secretary of the commission shall act as secretary to the council and the commission shall detail from time to time to the assistance of the council such employees as may be necessary.

(3) No compensation or expenses shall be paid from the treasury to the members of the council.

(4) The council shall: (a) consider all matters submitted to it by the industrial commission and advise the commission with respect thereto; (b) co-operate with the civil service commission in conducting examinations and in preparing lists of eligibles for positions, the duties of which require special knowledge or training, and advise the industrial commission in the selection and appointment of employees to such positions. The council shall adopt rules and regulations to govern its own proceedings. The secretary shall keep a complete record of all its proceedings which shall show the names of the members present at each meeting, and every matter submitted to the council by the commission and the action of the council thereon. The record shall be filed in the commission's office. All records and other documents of the commission shall be subject to inspection by the members of the council.

(§ 41) Deputy commissioners.—The commission shall appoint and may remove a first deputy commissioner who shall be in charge of the bureau of inspection; a second deputy commissioner who shall be in charge of the workmen's compensation bureau; a third deputy commissioner who shall be in charge of the bureau of mediation and arbitration.

The annual salaries of the deputies shall be as follows: first deputy, six thousand dollars; second deputy, six thousand dollars; third deputy, five thousand dollars.

(§ 42) **Bureaus.**—The department of labor shall have the following bureaus: inspection; statistics and information; mediation and arbitration; industries and immigration; employment; workmen's compensation; and such other bureaus as the commission may deem necessary. Each bureau and division of the department and the persons in charge thereof shall be subject to the supervision and direction of the commission and of any commissioner duly designated to supervise the work of such bureau, and in addition to their respective duties as prescribed by this chapter shall perform such other duties as may be assigned to them by the commission.

(§ 43) **Powers.**—1. The commissioners, deputy commissioners, secretary and other officers and assistants of the commission may administer oaths and take affidavits in matters relating to the powers and duties of the commission.

2. No person shall interfere with, obstruct or hinder by force or otherwise the commissioners, deputy commissioners, or any officer, agent or employee of the department of labor while in the performance of their duties, or refuse to properly answer questions asked by such officers or employees pertaining to the provisions of this chapter, or refuse them admittance to any place which is affected by the provisions of this chapter.

3. All notices, orders and directions of any officer, agent or employee of the department of labor other than the commission given in accordance with this chapter are subject to the approval of the commission and may be performed or given by and in the name of the commission and by any officer or employee of the department thereunto duly authorized by the commission in its name.

4. The commission may procure and cause to be used badges for the officers, agents and employees in the department of labor while in the performance of their duties.

(§ 44) **Expenses.**—All necessary expenses incurred by the commission in the discharge of its duties shall be paid by the state treasurer upon the warrant of the comptroller issued upon proper vouchers therefor. The reasonable and necessary traveling and other expenses of the deputy commissioners, the secretary of the commission, inspectors, investigators and other officers, assistants, agents and employees of the commission while engaged in the performance of their duties shall be paid in like manner upon vouchers approved by the commission and audited by the comptroller.

(§ 45) **Distribution of responsibility.**—At the first meeting of the commission after its appointment, and at least once in each year thereafter, the commission shall by resolution duly approved, apportion the administrative work involved in the performance of its duties and the exercise of its powers under this chapter and under the workmen's compensation law, among the members of the commission and shall designate the portion of such work which each of its members, under the direction and control of the commission, shall supervise and be responsible for.

The commission shall submit all questions of general policy arising in the exercise of its powers or the performance of its duties under the provisions of this chapter or under the provisions of the workmen's compensation law to the industrial council or its members for their consideration and advice.

(§ 46) **Reports.**—The commission shall report annually to the legislature and shall include in his annual report or make separately in each year a report of the operation of each bureau in the department.

(§ 47) **Old records.**—All statistics furnished to and all complaints, reports and other documentary matter received by the commission pursuant to this chapter or any act repealed or superseded thereby may be destroyed by such commission after the expiration of six years from the time of the receipt thereof.

(§ 48) **Counsel.**—The commission may appoint and at pleasure remove as counsel to the commission an attorney and counsellor at law of the state of New York who shall represent the department of labor or the commission and take charge of and assist in the prosecution of actions and proceedings brought by or on behalf of the commission or the department and who shall generally act as legal advisor to the commission. Such counsel shall receive an annual salary of six thousand dollars. The commission may appoint and at pleasure remove not exceeding three attorneys and counsellors at law to assist the counsel in the performance of his duties and may fix their compensation within the limits of the annual appropriation provided therefor.

(§ 49) **Secretary.**—The commission shall appoint and may remove a secretary, at an annual salary of six thousand dollars. The secretary shall perform such duties in connection with the meetings of the commission and its investigations, hearings and the preparation of rules and regulations under the provisions of this chapter as the commission may prescribe; and shall perform the duties of secretary of the workmen's compensation commission, as prescribed by the workmen's compensation law.

(§ 49a) **Officers and employes.**—The commission may appoint such additional deputy commissioners, and such officers, statisticians, actuaries, accountants, physicians, experts and other assistants and employees as may be necessary for the exercise of its powers and the performance of its duties under the provisions of this chapter and of the workmen's compensation law, all of whom shall be in either the competitive or the non-competitive class of the classified civil service; and the commission shall prescribe their duties and fix their salaries which shall not exceed in the aggregate the amount annually appropriated by the legislature for that purpose.

(§ 50) **Meetings.**—The commission shall hold stated meetings, at least once a month at the office of the department in Albany or in New York City, and shall hold other meetings when and where called by the chairman or two members of the commission. All meetings of the commission shall be open to the public. The commission shall keep records of its investigations and other official actions, and minutes of its proceedings showing the vote of each member upon every question.

(§ 51) **Investigations.**—The commission shall have power to make investigations concerning and report upon the conditions of labor generally and upon all matters relating to the enforcement and effect of the provisions of this chapter and of the rules and regulations of the commission. Each member of the commission and the secretary shall have power to administer oaths and take affidavits and to make personal inspections of all places to which this chapter applies. The commission shall have power to subpoena and require the attendance of witnesses and the production of books and papers pertinent to the investigations and inquiries hereby authorized, and

to examine them in relation to any matter it has power to investigate, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the commission, or excused from attendance.

(§ 51a) Rules and regulations.—(1) The commission shall have power to make, amend and repeal rules and regulations for carrying into effect the provisions of this chapter, applying such provisions to specific conditions and prescribing means, methods and practices to effectuate such provisions.

(2) The commission shall have power to make, amend and repeal rules and regulations for proper sanitation in all places to which this chapter applies, and for guarding against and minimizing fire hazards, personal injuries and diseases in all places to which this chapter applies, with respect to

a. The construction, alteration, equipment and maintenance of all such places, including the conversion of structures into factories, factory buildings and mercantile establishments;

b. The arrangement and guarding of machinery and the storing and keeping of property and articles;

c. The places where and the methods and operation by which trades and occupations may be conducted, and the conduct of employers, employees and other persons;

It being the policy and intent of this chapter that all places to which it applies shall be so constructed, equipped, arranged, operated and conducted in all respects as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein, and frequenting the same, and that the commission shall from time to time make such rules and regulations as will effectuate such policy and intent.

(3) Whenever the commission finds that any industry, trade, occupation or process involves such elements of danger to the lives, health or safety of persons employed therein as to require special regulation for the protection of such persons, the commission shall have power to make special rules and regulations to guard against such elements of danger by establishing requirements as to temperature, humidity, the removal of dusts, gases or fumes and requiring licenses to be applied for and issued by the commission as a condition of carrying on any such industry, trade, occupation or process and requiring medical inspection and supervision of persons employed and applying for employment, and by other appropriate means.

(4) The rules and regulations may be limited in their application to certain classes of establishments, places of employment, machines, apparatus, articles, processes, industries, trades or occupations or may apply only to those to be constructed, established, installed or provided in the future.

(5) The rules and regulations of the commission shall have the force and effect of law and shall be enforced in the same manner as the provisions of this chapter.

(6) No provision of this chapter specifically conferring power on the commission to make rules and regulations shall limit the power conferred by this section.

(§ 52) Industrial code—Procedure.—The rules and regulations of the commission shall constitute the industrial code. At least three affirmative votes shall be necessary for the adoption, amendment or repeal of any rule or regulation. Before any rule or regulation is adopted, amended or repealed, there shall be a public hearing thereon, notice of which shall be published

at least once, not less than ten days prior thereto, in such newspapers as the commission may prescribe, and in the City Record in the city of New York. The commission may appoint committees composed of employers, employees and experts to assist it in framing rules and regulations and shall submit all proposed rules and regulations to the industrial council or the members thereof for their consideration and advice. Every rule and regulation adopted, every amendment or repeal thereof and every act of the commission shall be promptly published in the bulletins of the department and in the City Record in the city of New York. The rules and regulations and all amendments and repeals thereof shall, unless otherwise prescribed by the commission, take effect twenty days after the first publication thereof, and every rule and regulation and every amendment or repeal thereof, shall be certified by the secretary of the commission and filed with the secretary of state.

(§ 52a) Review by Commission.—1. Any person in interest may petition the commission for a review of the validity or reasonableness of any rule, regulation or order made by the commission or otherwise under the provisions of this chapter.

2. The petition shall be verified and filed with the commission and shall state in full detail: (a) The rule, regulation or order upon which the hearing is desired; in what respects it is claimed to be invalid or unreasonable; (c) the issues to be considered by the commission on the hearing.

The commission may join in one proceeding all petitioners alleging invalidity or unreasonableness of the same or substantially similar rules, regulations or orders. The petitioner shall be deemed to have waived all objections to any irregularities or illegalities in the rule, regulation or order upon which a hearing is sought other than those set forth in the petition.

3. Upon receipt of the petition, the commission shall, if necessary to determine the issues raised, order a hearing, or if the issues have been adequately considered in a prior proceeding under this section or otherwise, the commission may, without hearing, confirm its previous determination. Notice of the time and place of hearing, which shall be open to the public, shall be given to the petitioner and to such other persons as the commission may find directly interested in the issues raised by the petitioner.

4. If, upon such hearing, the commission finds that the rule, regulation, or order complained of is invalid or unreasonable it shall revoke it or substitute therefor a new or amended one. If the substituted rule, regulation or order involves a substantial amendment of the original one, the parties may, by new petition, bring before the commission all objections to its validity and reasonableness and no action under the provisions of section fifty-two-b shall meanwhile be entertained by the court.

5. The decision of the commission shall be final unless within thirty days after its issuance one of the parties to the proceeding before the commission appeals from its decision by bringing an action as provided in section fifty-two-b.

(§ 52b) Review by court.—1. Any person in interest may bring an action in the supreme court against the commission as defendant, to determine the validity and reasonableness of any provision of this chapter or of the rules and regulations made in pursuance thereof or of any order directing compliance therewith, provided that no such action to determine the validity or

reasonableness of any rule, regulation or order shall be brought, except as an appeal from the determination of the commission, as provided in section fifty-two-a.

2. If the action is an appeal from a determination of the commission the commission shall file with the clerk of the court a certified copy of the record of its hearing in the matter, and if the appeal is from a determination of the commission refusing a hearing on the ground that the issues have been determined in a prior proceeding, the commission shall also file with the clerk of the court a certified copy of the records of its hearings in the prior proceedings.

3. Such action shall have precedence over other actions in the same court in accordance with the provisions of subdivision one of section seven hundred and ninety-one of the code of civil procedure.

4. The court shall thereafter try the issues and render its decision based upon the record of the commission's hearings as well as the evidence submitted in the action before it. The court may refer any issue arising in such action to the commission for further consideration. At any time during such action the party appealing from the commission's decision shall have the right to apply, without notice, to the court for an order directing all questions of fact arising upon one or more specified issues to be tried and determined by a jury, and the court shall thereupon cause these questions to be distinctly and plainly stated for trial accordingly, and the findings of the jury upon such questions so stated shall be conclusive in the action. Appeals from the supreme court to the appellate division of the supreme court and to the court of appeals may be taken in such cases and subject to the same limitations as in other cases.

(§ 52c) Limited review of provisions of chapter and of rules, regulations and orders.—1. Every provision of this chapter and of the rules and regulations made in pursuance thereof, and every order directing compliance therewith shall be valid and in full force and effect unless declared invalid in a proceeding for review brought under the provisions of section fifty-two-a. Except as provided in section fifty-two-b no court shall have jurisdiction to review, reverse or annul any such provision or order or to enjoin, restrain or interfere with its enforcement.

Every such provision or order shall in a prosecution or action to impose a penalty for its violation be deemed valid and in full force and effect, unless prior to the commencement of the prosecution or action such provision or order has been revoked, or modified by the commission, or annulled by a court having jurisdiction thereof, in proceedings brought under the provisions of sections fifty-two-a or fifty-two-b, or unless such proceedings are pending in which case the prosecution or action shall be stayed by the court and abide the final determination thereof. If any such prosecution or action is commenced against a defendant who has not previously been served with an order to comply with such provision, or who has been served with such an order but has not had a reasonable opportunity to comply therewith, and if within five days the defendant commences proceedings under the provisions of sections fifty-two-a or fifty-two-b, the prosecution or action shall be stayed as if such proceedings had been pending at the time it was commenced.

(§ 52d) **Variations.**—If in the opinion of the commission there shall be practical difficulties in carrying out the strict letter of a provision of this chapter or of a rule or regulation adopted by the commission affecting the construction or alteration of buildings and structural changes therein, the installation of fixtures and apparatus safeguarding the machinery and prevention of accidents, a variation from or modification of its requirements so that the spirit of the provision or rule or regulation shall be observed, public safety secured and substantial justice done, may be permitted by the commission as provided by this section. The person affected by such provision or rule or regulation or his agent may petition the commission for one or more such variations or modifications stating the grounds therefor. The commission shall fix a day within a reasonable time for a hearing on the petition and upon the hearing the petitioner may appear in person or by agent or attorney. The decision of the commission shall be rendered promptly and shall be final. A copy of the petition and the decision shall be filed by the secretary of the commission in his office and if the petition be allowed wholly or in part a certificate stating the reason for such allowance shall be filed in like manner.

Powers conferred upon the commission by this section shall be subject to the requirement of this chapter that all places to which it applies shall be so constructed, equipped, arranged, operated and conducted in all respects as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein.

(§ 52e) **Protection of employés.**—The commission shall render all aid and assistance necessary for the enforcement of any claim by an employee against his employer which the commission finds reasonable and just and for the protection of employees from frauds, extortions, exploitation, or other improper practices on the part of any person, public or private; and shall investigate such cases for the purpose of presenting the facts to the proper authorities and of inducing action thereon by the various agencies of the state possessing the requisite jurisdiction.

§ 2. **Expenses.**—Section sixty-two of the workmen's compensation law is hereby amended to read as follows: [See § 62, ante, p. 1444.]

§ 3. **Offices of commissioner and deputy commissioners of labor abolished.**—On and after the appointment and qualification of the members of the industrial commission, the office of commissioner of labor as created by section forty of the labor law, as amended by chapter seven hundred and twenty-nine of the laws of nineteen hundred and eleven, and chapter one hundred and forty-five of the laws of nineteen hundred and thirteen shall be abolished and the powers and duties of the commissioner of labor, then in office, shall cease. The offices of first and second deputy commissioners of labor are hereby abolished, and the powers and duties of the said deputy commissioners then in office shall cease upon the appointment by the industrial commission of the deputy industrial commissioners herein provided for.

§ 4. **Workmen's Compensation Commission abolished.**—The state workmen's compensation commission created as provided in section sixty of the workmen's compensation law is hereby abolished, and the terms of the office of the members of such commission then in office shall cease on the appointment and qualification of the members of the industrial commission. All

the powers, duties, obligations and liabilities conferred or imposed by law upon the workmen's compensation commission by the workmen's compensation law or any other statute are hereby conferred and imposed upon the state industrial commission and such commission may exercise and perform such powers and duties and shall be subject to such obligations and liabilities in the same manner, to the same extent and with the same force and effect as would have been the case had the workmen's compensation commission been continued in office. For the purpose of exercising such powers, performing such duties, being subjected to such obligations and liabilities, the state industrial commission shall be deemed to be a continuation of such workmen's compensation commission. The offices of secretary to the workmen's compensation commission and of the deputies appointed by the workmen's compensation commission, are hereby abolished; and the powers and duties of such officers then in office shall cease upon the appointment and qualification of the members of the industrial commission.

§ 5. Employees of Commission.—All other officers, assistants, inspectors and employees of the department of labor or the workmen's compensation commission in office when this act takes effect shall continue in office until removed by the industrial commission or until their offices are abolished as provided by law.

§ 6. Rules and regulations continued; pending actions or proceedings.—The rules, regulations and orders of the commissioner of labor, the industrial board, or the workmen's compensation commission in force when this act takes effect enacted or promulgated pursuant to law are continued in full force and shall be operative until modified, superseded or repealed by the industrial commission. This act shall not affect pending cases or proceedings, civil or criminal, brought by or against the commissioner of labor or the workmen's compensation commission. All proceedings, hearings, investigations and other matters pending before the commissioner of labor, the industrial board, or the workmen's compensation commission shall be continued and brought to a final determination before the industrial commission in the same manner as though the commissioner of labor, the industrial board and the workmen's compensation commission had been continued in office. Any award or determination made by the workmen's compensation commission prior to the taking effect of this act shall have the same force and effect as though the workmen's compensation commission had been continued in office.

§ 7. Construction.—Whenever the term "department of labor," "commissioner of labor," "industrial board," or "workmen's compensation commission" occurs in any law or in any rule or regulation made in pursuance of law, or whenever in any law reference is made to such department, commissioner, board, commission or officer, such term or reference shall be deemed to mean the industrial commission as established by this act.

§ 8. Repeal.—Sections sixty and sixty-one of the workmen's compensation law are hereby repealed.

§ 9. When effective.—This act shall take effect immediately.

INSURANCE

Chapter 16, Laws of 1914

An Act to amend the Insurance Law, in relation to the approval of premium rates of corporations and associations transacting the business of workmen's compensation insurance.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. **Amendment to insurance law.**—Article one of chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," is hereby amended by adding at the end thereof a new section, to be section sixty-seven to read as follows:

(§ 67) **Approval of premium rates.**—Every insurance corporation or association, except the state insurance fund as administered by the state workmen's compensation commission, authorized to transact business in this state, which insures employers against liability for compensation under the workmen's compensation law, shall file with the superintendent of insurance its classification of risks and premiums relating thereto, and any subsequent proposed classification of risks and premiums, together with basis rates and schedules, if a system of schedule rating be in use, none of which shall take effect until the superintendent of insurance shall have approved the same as adequate for the risks to which they respectively apply. The superintendent of insurance may withdraw his approval of any premium rate or schedule made by any insurance corporation or association if, in his judgment, such premium rate or schedule is inadequate to provide the necessary reserves.

§ 2. **When effective.**—This act shall take effect immediately.

Approved by Governor, March 5, 1914.

Chapter 832, Laws of 1913, as Amended by Chapter 506, Laws of 1915, and by Chapter 393, Laws of 1916

An Act to amend the Insurance Law, in relation to the creation of mutual companies to insure employers against loss, damage or compensation resulting from injuries suffered by employees or other persons for which the person injured is liable.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. **Amendment to Insurance Law.**—Chapter thirty-three of the laws of nineteen hundred and nine, entitled "An act in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws," amended by Chapter 832, Laws of 1913, is further amended by Chapter 506, Laws of 1915, to read as follows:

ARTICLE 5A.—MUTUAL EMPLOYERS' LIABILITY AND WORKMEN'S COMPENSATION CORPORATIONS

(§ 185) **Incorporation.**—Thirteen or more persons may become a corporation for the purpose of insuring on the mutual plan against loss or damage resulting from accident to or injury suffered by an employee or other person and for which the person insured is liable, or the liability of the

employer to pay compensation to his employees, or the compensation of employees under any workmen's compensation law, or against loss or damage caused by a truck, wagon or other vehicle propelled by steam, gas, gasoline, electric, mechanical or other power or drawn by horses or mules, used in trade or manufacture and owned by any such person to the property of another for which loss or damage the person insured is liable, by making and filing in the office of the superintendent of insurance a certificate to be signed by each of them, stating their intention to form a corporation for the purpose named, and setting forth a copy of the charter which they propose to adopt, which shall state the name of the proposed corporation, the place where it is to be located, the mode and manner in which its corporate powers are to be exercised, the number of directors, the manner of electing its directors and officers, the time of such elections, the manner of filling vacancies, the names and post office addresses of the directors who will serve until the first annual meeting of such corporation, and such further particulars as may be necessary to explain and make manifest the objects and purposes of the corporation. Such certificate shall be proved or acknowledged and recorded in a book kept for that purpose by the superintendent of insurance and a certified copy thereof shall be delivered to the persons executing the same.

(§ 186 [as amended by chapter 506, Laws of 1915]) Completion of organization.—Upon receipt of a certified copy of the certificate of incorporation from the superintendent of insurance, the persons signing such certificate may open books to receive applications for membership therein. No such corporation shall transact any business of insurance unless the annual premium cost on the insurance applied for shall be not less than twenty-five thousand dollars at the minimum annual rates approved by the superintendent of insurance and until at least forty employers employing not less than twenty-five hundred employees; or thirty employers employing not less than five thousand employees; or twenty employers employing not less than seven thousand five hundred employees; or ten employers employing not less than ten thousand employees, have become members of such corporation and applied for and agreed to take insurance therein, covering the liability of such employers to their employees for accidents to or injuries suffered by such employee nor until the facts specified in this section have been certified under oath by at least three of the persons signing the original certificate, to the superintendent of insurance, and the superintendent of insurance has issued a license to such corporation authorizing such corporation to begin writing the insurance specified in this article. The superintendent of insurance must be satisfied that the membership list of the corporation is genuine, and that every member thereof will take the policies as agreed by him within thirty days of the granting of the license to the corporation by the superintendent of insurance to issue policies. If at any time the number of members or the number of employees who are employed by the members of the corporation falls below the number required by this section, no further policies shall be issued by the corporation until other employers have made bona fide applications for insurance therein, who, together with the existing members, amount to not less than forty employers who employ not less than twenty-five hundred employees, or thirty employers who employ not less than five thousand employees, or twenty employers who employ not less than seven

thousand five hundred employees, or ten employers who employ not less than ten thousand employees, and in the event that such applications for insurance shall not be obtained within a reasonable time, to be fixed by the superintendent of insurance, such superintendent may take the proceedings against such corporation under section sixty-three of this chapter to the same effect as if clause h of subdivision one of such section was specifically applicable to corporations organized under this article.

The members of the corporation shall be policyholders therein, and when any member ceases to be a policyholder he shall cease, at the same time, to be a member of the corporation. A corporation, partnership, association or joint-stock company may become a member of such insurance corporation and may authorize another person to represent it in such insurance corporation, and such representative shall have all the rights of any individual member. Any person acting as employer in the capacity of a trustee may insure in such corporation and as such trustee may assume the liabilities and be entitled to the rights of a member, but shall not be personally liable upon such contract of insurance.

Such corporation may borrow money or assume liability in a sum sufficient to defray the reasonable expenses of its organization.

(§ 187) Directors and officers.—Any such corporation shall have not less than thirteen directors, and such officers as shall be provided in the certificate of incorporation or by the by-laws made by the members. The directors shall be elected annually by the votes of the members. All except two of the directors of the corporation elected after the organization of the corporation is completed and it is authorized to begin to issue insurance policies shall be members of the corporation. All the officers except the secretary, assistant secretary and the actuary must be members of the board of directors.

(§ 188 [as amended by chapter 506, Laws of 1915]) Meetings—Basis of right to vote.—At all meetings of the members of the corporation each member shall have one vote and one additional vote for every five hundred employees or major fraction thereof, covered by the policy held by such member in the corporation, provided that no member shall have more than twenty votes. The number of votes of a member shall be determined by the average number of employees at work and covered by said member's policy in the corporation during the last six months from a date not more than ten days immediately prior to the date of any such meeting. Before any member shall be permitted to cast more than one vote at any meeting of members he shall file with the secretary an affidavit showing the average number of employees at work during the preceding six months covered by the employer's policy of insurance.

(§ 189) Assessments.—The corporation may in its by-laws and policies fix the contingent mutual liability of the members for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a member shall not be less than an amount equal to and in addition to the cash premium written in the policy. If the corporation is not possessed of cash funds above its unearned premium sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the members liable to assessment therefor, in proportion to their several liability. Every member shall be

liable to pay and shall pay his proportionate part of any assessment which may be laid by the corporation in accordance with law and his contract, on account of losses and expenses incurred while he was a member, if he is notified of such assessment within one year after the expiration of his policy. All assessments shall be based upon present values of all future payments, and all proposed premium assessments shall be filed in the insurance department and shall not take effect until approved by the superintendent of insurance, after such investigation as he may deem necessary. All funds of the corporation and the contingent liability of the members thereof shall be available for the payment of any claim against the corporation.

(§ 190 [as amended by chapter 393, Laws of 1916]) Dividends.—The board of directors may, from time to time, fix and determine the amount to be paid as a dividend upon policies expiring during each year after retaining sufficient sums to pay all the compensation and other policy obligations which may be payable on account of the injuries sustained and expenses incurred. Such dividend shall not take effect nor be distributed until approved by the superintendent of insurance after such investigation as he may deem necessary. Any such corporation may hold cash assets in excess of its liabilities, but such excess shall be limited to one hundred per centum of its reserves for losses and expenses incurred, and may be used from time to time in payment of losses, dividends and expenses.

(§ 191 [as amended by chapter 506, Laws of 1915]) Reserves—Suspension—Cancellation and reinstatement of certificate.—Such corporation shall be required to maintain the same reserves for the protection of policyholders and employees who may have a right of action directly against such corporation as are required to be maintained by stock insurance corporations in relation to the same class of insurance, except that reserves for liability for insurance of compensation under the workmen's compensation law shall be prescribed by the superintendent of insurance, and the superintendent of insurance may suspend or cancel the certificate issued by him authorizing said corporation to transact such insurance business at any time when in the judgment of the superintendent of insurance the reserves of said corporation are insufficient to insure and secure the payment of its policy obligations, and the superintendent of insurance may reinstate or renew said certificate whenever by assessment or otherwise said reserves have been increased to a sum sufficient in the judgment of the superintendent of insurance to insure and secure the payment of the policy obligations of such corporation.

(§ 192) Reports to and examinations by superintendent of insurance.—Every such corporation shall make reports to the superintendent of insurance at the same times and in the same manner as are required from stock insurance companies transacting the same kind of business, and the superintendent of insurance may examine into the affairs of such corporation at any time, either personally or by any duly authorized examiner appointed by him, and the superintendent of insurance must make such an examination into the affairs of said corporation at least once in every two years.

(§ 193) Prevention of accidents.—The board of directors shall make and enforce reasonable rules and regulations not in conflict with the laws of the state for the prevention of accidents to the employees on the premises of members, and for this purpose the inspectors of the corporation shall have

free access to all such premises during regular working hours. The policy of any member neglecting to provide suitable safety appliances as provided by law or as required by the board of directors may be canceled and terminated by the board of directors after giving to such member notice of cancellation ten days prior to its becoming effective.

(§ 194 [as amended by chapter 393, Laws of 1916]) Authorization of foreign mutual insurance corporations.—After January first, nineteen hundred and seventeen, the superintendent of insurance may, in his discretion, issue a certificate of authority to a mutual corporation organized under the laws of another state to do such insurance in this state; provided that, in no event, shall authority be given to any such mutual corporation to do other kinds of business than those specified in this article. Such corporation shall be required to maintain the same reserves for the protection of members and employees as are required for domestic corporations authorized to transact the same kind of insurance, and shall at all times have and maintain a surplus over and above all liabilities, including unearned premiums and loss reserves, of not less than one hundred thousand dollars. If any such corporation shall not at all times have and maintain the surplus and reserves hereby required the superintendent of insurance may, at any time, in his discretion, revoke its certificate of authority to do business in this state.

§ 2. When effective.—This act shall take effect immediately.

Approved December 23, 1913.

OHIO

WORKMEN'S COMPENSATION ACT

Section

1. State Liability Board of Awards created.
2. Qualifications of members.
3. Salary.
4. Sessions—Record of procedure.
5. Quorum.
- 6, 7. (Repealed.)
8. Rules and regulations.
- 9, 10. (Repealed.)
11. Powers of members.
12. Enforcing obedience to orders.
13. Service and witness fees.
14. Depositions.
15. Transcript as evidence.
16. Blank forms.
- 17-39. (Repealed.)

SUPPLEMENTAL ACT

1. Further duties of Board of Awards.
2. Office—Expenses—Seal.
3. Assistants.
4. Information to Board.
5. Information to be private.
6. Classification of employments authorized.
7. Premium rates—Requirements in classifying.
8. Rules for administration of fund.
9. Custodian of fund.
10. Deposit of part of fund.
11. Investment of fund.
12. Bond of treasurer.
13. "Employer" defined.
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15. Contribution based on payroll.
16. Contribution of state.
17. Same—Method of payment.
18. Lists of compensation of public employes.
19. Payment of premiums by counties.
20. Report of treasurer—Default of payment.
21. Compensation provided.
22. Semi-annual contributions — Substitute schemes.

Section

23. Exclusive liability in certain cases.
24. Same—Employers of less than five—Notice of insurance.
25. Liability for compensation.
26. Liability for damages—Abolition of defenses.
27. Action where employer has not insured—Procedure before Board.
28. Collection of payments from defaulting employers.
29. Civil liability—Election of employé.
30. Preference of compensation claims.
31. Waiting period.
32. Total temporary disability.
33. Schedule of compensation.
34. Permanent total disability.
35. Death benefits—Who are dependents.
36. Payment to representative—Apportionment.
37. Basis of compensation.
38. Probable increase in wages.
39. Continuing jurisdiction.
40. Commutation to lump sum.
41. Exemption of claims.
42. Medical and hospital expenses.
43. Jurisdiction of Board—Appeal.
44. Extraordinary procedure.
45. Not measure of damages.
46. Minors sui juris.
47. Waiver of right to compensation—Contribution to premium.
48. Medical examination.
49. Inspection of employer's records.
50. Misrepresentation of payroll.
51. Employés engaged in interstate commerce.
52. Employer's report of accident.
53. Duty of attorney general.
54. Contracting out.
55. Payment of expenses.
56. Annual report of Board.
57. Publication of rules.
58. Immunity from injunction.
59. Constitutionality.
60. Repeal.

INDUSTRIAL COMMISSION ACT

1. Industrial Commission created.
2. Removal of members.
3. Qualifications of commissioners.
4. Salary—Oath—Bond.
5. Organization—Vacancies.
6. Office.
7. Traveling expenses.
8. Seal of Commission.
9. Sessions—Record of proceedings.

10. Rules of procedure.
11. Certain departments abolished.
12. Commission succeeds Board of Awards.
13. Definitions.
14. Assistants to Commission.
15. Safety requirements.
16. Same.
17. Removal of safety devices.
18. Information to be furnished.

Section

19. Filling of blanks.
20. Access to places of employment.
21. Power and jurisdiction.
22. Same.
23. Investigation of unsafe places of employment.
24. Transfer of duties and powers.
25. Orders prima facie lawful.
26. When orders of Commission effective.
27. Hearing on reasonableness of order.
28. Concurrent jurisdiction—Hearing on local orders.
29. Action to set aside order.
30. Powers of commissioners—Enforcement of orders.
31. Witness fees.

Section

32. Depositions.
33. Record of proceedings.
34. Publication of rules and orders.
35. Deputy commissioner—Powers.
36. Special prosecutor in compensation cases—Duty of attorney general.
37. Construction of requirements.
38. Action to vacate order.
39. Modification of order after appeal.
40. Jurisdiction to vacate orders.
41. Stay or suspension of order.
42. Preference of compensation claims.
43. Penalties.
44. Separate offenses.
45. Validity of sections independent.
46. Repeal.

WORKMEN'S COMPENSATION ACT

(Senate Bill No. 127, Gen. Code, § 1465-37 et seq.)

An act to create a state insurance fund for the benefit of injured, and the dependents of killed employes, and to provide for the administration of such fund by a state liability board of awards.

Be it enacted by the General Assembly of the state of Ohio:

§ 1. (1465-37) **State Liability Board of Awards created.**—There is hereby created a state liability board of awards, to be composed of three members, not more than two of whom shall belong to the same political party, to be appointed by the governor, within thirty days after the passage of this act, one of which members shall be appointed for the term of two years, one member for four years and one member for six years, and thereafter as their terms expire the governor shall appoint one member for the term of six years. Vacancies shall be filled by appointment by the governor for the unexpired term.

Note.—This section was not specifically repealed by the Industrial Commission Act but is repealed by implication by sections 1 and 12 thereof (103 O. L. 95).

§ 2. (1465-38) **Qualifications of members.**—Each member of the board shall devote his entire time to the duties of his office and shall not hold any position of trust or profit or engage in any occupation or business interfering or inconsistent with his duty as such member, or serve on or under any committee of any political party.

Note.—This section is not specifically repealed by the Industrial Commission Act, but section 3 of that act probably effects its repeal by implication.

§ 3. (1465-39) **Salary.**—Each member of the board shall receive an annual salary of five thousand dollars, payable in the same manner as salaries of state officers are paid.

Note.—This section is not specifically repealed by the Industrial Commission Act, but section 4 of that act effects its repeal by implication.

§ 4. (1465-40) **Sessions—Record of procedure.**—The board shall be in continuous session and open for the transaction of business during all the business hours of each and every day, excepting Sundays and legal holidays. All sessions shall be open to the public, and shall stand and be adjourned without further notice thereof on its records. All proceedings of the board shall be shown on its record of proceedings, which shall be a public record,

and shall contain a record of each case considered, and the award made with respect thereto, and all voting shall be had by the calling of each member's name by the secretary and each vote shall be recorded as cast.

Note.—This section was not repealed by the Industrial Commission Act. See section 9 of that act for a similar section.

§ 5. (1465-41) **Quorum.**—A majority of the board shall constitute a quorum for the transaction of business, and a vacancy shall not impair the right of the remaining members to exercise all the powers of the full board so long as a majority remains. Any investigations, inquiry or hearing which the board is authorized to hold, or undertake, may be held or undertaken by or before any one member of the board. All investigations, inquiries, hearings and decisions of the board, and every order made by a member thereof, when approved and confirmed by a majority of the members, and so shown on its record of proceedings, shall be deemed to be the order of the board.

Note.—See section 5 of the Industrial Commission Act for similar provisions (103 O. L. 95).

§§ 6 and 7. (Repealed. 103 O. L. 72.)

§ 8. (1465-44) **Rules and Regulations.**—The board shall adopt reasonable and proper rules to govern its procedure, regulate and provide for the kind and character of notices, and the services thereof, in cases of accident and injury to employes, the nature and extent of the proofs and evidence, and the method of taking and furnishing the same, to establish the right to benefits of compensation from the state insurance fund, hereinafter provided for, the forms of application of those claiming to be entitled to benefits or compensation therefrom, the method of making investigations, physical examinations and inspections, and prescribe the time within which adjudications and awards shall be made.

Note.—See section 10 of the Industrial Commission Act for similar provisions (103 O. L. 72).

§§ 9 and 10. (Repealed. 103 O. L. 72.)

§ 11. (1465-47) **Powers of members.**—Each member of the board, the secretary and every inspector or examiner appointed by the board shall, for the purposes contemplated by this act, have power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

§ 12. (1465-48) **Enforcing obedience to orders.**—In case of disobedience of any person to comply with the order of the board, or subpoena issued by it as one of its inspectors, or examiners, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refuse to permit an inspection as aforesaid, the probate judge of the county in which the person resides, on application of any member of the board, or any inspector or examiner appointed by it, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpoena issued from such court on a refusal to testify therein.

§ 13. (1465-49) **Service and witness fees.**—Each officer who serves such subpoena shall receive the same fees as a sheriff, and each witness who appears, in obedience to a subpoena, before the board or an inspector or examiner, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of common pleas, which shall be audited and paid from the state treasury in the same manner as other expenses are audit-

ed and paid, upon the presentation of proper vouchers approved by any two members of the board. No witness subpoenaed at the instance of a party other than the board or an inspector shall be entitled to compensation from the state treasury unless the board shall certify that his testimony was material to the matter investigated.

§ 14. (1465-50) Depositions.—In an investigation, the board may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by the law for like depositions in civil actions in the court of common pleas.

§ 15. (1465-51) Transcript as evidence.—A transcribed copy of the evidence and proceedings, or any specific part thereof, or any investigation, by a stenographer appointed by the board, being certified by such stenographer to be a true and correct transcript of the testimony on the investigation, or of a particular witness, or of a specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation so purporting to be taken and subscribed, may be received in evidence by the board with the same effect as if such stenographer were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand to any party upon the payment of the fee therefor, as provided for transcript in courts of common pleas.

§ 16. (1465-52) Blank forms.—The board shall prepare and furnish blank forms, and provide in its rules for their distribution so that the same may be readily available, of application for benefits or compensation from the state insurance fund, notices to employers, proofs of injury or death, of medical attendance, of employment and wage earnings, and such other blanks as may be deemed proper and advisable, and it shall be the duty of insured employers to constantly keep on hand sufficient supply of such blanks.

§§ 17, 18, 19, and 20. (Repealed. 103 O. L. 72.)

§ 20-1. (Repealed. 103 O. L. 72, effective January 1, 1914.)

§ 20-2. (Repealed. 103 O. L. 72.)

§ 21. (Repealed. 103 O. L. 72, effective January 1, 1914.)

§ 21-1. (Repealed. 103 O. L. 72, effective January 1, 1914.)

§ 21-2. (Repealed. 103 O. L. 72, effective January 1, 1914.)

§§ 23 to 39, inclusive. (Repealed. 103 O. L. 72.)

SUPPLEMENTAL ACT

(Amended Senate Bill No. 48, 103 O. L. p. 72.)

An act to further define the powers, duties and jurisdiction of the state liability board of awards with reference to the collection, maintenance and disbursement of the state insurance fund for the benefit of injured, and the dependents of killed employes and requiring contribution thereto by employers, and to repeal sections 1465-42, 1465-43, 1465-45, 1465-46, 1465-53, 1465-54, 1465-55, 1465-56, 1465-57, 1465-58, 1465-59, 1465-60, 1465-61, 1465-62, 1465-63, 1465-64, 1465-65, 1465-66, 1465-67, 1465-68, 1465-69, 1465-70, 1465-71, 1465-72, 1465-73, 1465-74, 1465-75, 1465-76, 1465-77, 1465-78, 1465-79, of the General Code.

Be it enacted by the General Assembly of the state of Ohio:

§ 1. (1465-41a) Further duties of Board of Awards.—That in addition to the powers, duties and jurisdiction now conferred and imposed upon

it by law, the state liability board of awards shall have and exercise the powers, duties and jurisdiction provided for in this act.

Note.—See sections 1, 2, 3, 4, 5, 8, 11, 12, 13, 14, 15 and 16, of 102 O. L. 524.

§ 2. (1465-42) Office—Expenses—Seal.—The board shall keep and maintain its main office in the city of Columbus, and such branch office or offices in other cities of the state as it shall deem proper, and shall provide suitable rooms, necessary office furniture, supplies, books, periodicals and maps for the same. All necessary expenses shall be audited and paid out of the state treasury. It shall provide itself with a seal for the authentication of its orders, awards and proceedings, upon which shall be inserted the words "State Liability Board of Awards—State of Ohio—Official Seal."

The board may hold sessions at any place within the state.

Note.—See sections 6 and 8 and paragraph 12 of section 22 of 103 O. L. 95, for similar provisions.

§ 3. (1465-43) Assistants.—The board may employ a secretary, actuaries, accountants, inspectors, examiners, experts, clerks, physicians, stenographers and other assistants, and fix their compensation. Such employment and compensation shall be first approved by the governor and shall be paid out of the state treasury. The members of the board, secretary, actuaries, accountants, inspectors, examiners, experts, clerks, physicians, stenographers, and other assistants that may be employed shall be entitled to receive from the state treasury their actual and necessary expenses while traveling on the business of the board, and the members of the board may confer and meet with officers of other states and officers of the United States on any matters pertaining to their official duties. Such expenses shall be itemized and sworn to by the person who incurred the expense and allowed by the board.

Note.—See sections 7 and 14 of 103 O. L. 95, for similar provisions.

§ 4. (1465-45) Information to board.—Every employer shall furnish the board, upon request, all information required by it to carry out the purposes of this act. In the month of January of each year, every employer of the state, employing five or more employés regularly in the same business, or in or about the same establishment, shall prepare and mail to the board, at its main office in the city of Columbus, Ohio, a statement containing the following information, viz.: the number of employés employed during the preceding year from January 1 to December 31st inclusive; the number of such employés employed at each kind of employment; and, the aggregate amount of wages paid to such employés, which information shall be furnished on a blank or blanks to be prepared by the board; and it shall be the duty of the board to furnish such blanks to employers free of charge, upon request therefor. Every employer receiving from the board any blank, with directions to fill out the same, shall cause the same to be properly filled out so as to answer fully and correctly all questions therein propounded, and to give all the information therein sought, or if unable to do so, he shall give to the board in writing good and sufficient reasons for such failure. The board may require that the information herein required to be furnished be verified under oath and returned to the board within the period fixed by it or by law. The board or any member thereof, or any person employed by the board for that purpose, shall have the right to examine, under oath, any employer, or the officer, agent or employé thereof for the purpose of ascertaining any information which such employer is required by this act to furnish to the board.

Any employer who shall fail or refuse to furnish to the board the annual statement herein required, or who shall fail or refuse to furnish such other information as may be required by the board under authority of this section, shall be liable to a penalty of five hundred dollars, to be collected in a civil action brought against said employer in the name of the state; all such penalties, when collected, shall be paid into the state insurance fund and become a part thereof.

Note.—See sections 18 and 19 of 103 O. L. 95, for similar provisions.

§ 5. (1465—46) Information to be private.—The information contained in the annual report provided for in the preceding section, and such other information as may be furnished to the board by employers in pursuance of the provisions of said section, shall be for the exclusive use and information of said board in the discharge of its official duties, and shall not be open to the public nor be used in any court in any action or proceeding pending therein unless the board is a party to such action or proceeding; but the information contained in said report may be tabulated and published by the department, in statistical form, for the use and information of other state departments and the public. Any person in the employ of the board who shall divulge any information secured by him in respect to the transactions, property or business of any company, firm, corporation, person, association, co-partnership or public utility to any person other than the members of the board, while acting as an employé of the board, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), and shall thereafter be disqualified from holding any appointment or employment with the board.

§ 6. (1465—53) Classification of employments authorized.—The state liability board of awards shall classify occupations with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premium of the risks of the same, based upon the total payroll and number of employés in each of said classes of occupation sufficiently large to provide an adequate fund for the compensation provided for in this act, and to maintain a state insurance fund from year to year.

Note.—All occupations have been classified and rates of premiums fixed as required by this section. The "Manual of Rules and Rates" may be obtained from the Commission upon application.

§ 7. (1465—54) Premium rates—Requirements in classifying.—It shall be the duty of the state liability board of awards, in the exercise of the powers and discretion conferred upon it in the preceding section, ultimately to fix and maintain, for each class of occupation, the lowest possible rates of premium consistent with the maintenance of a solvent state insurance fund and the creation and maintenance of a reasonable surplus, after the payment of legitimate claims for injury and death that it may authorize to be paid from the state insurance fund for the benefit of injured and the dependents of killed employés; and, in order that said object may be accomplished, the board shall observe the following requirements in classifying occupations and fixing the rates of premium for the risks of the same:

1. It shall keep an accurate account of the money paid in premiums by each of the several classes of occupations or industries, and the disbursements on account of injuries and death of employés thereof, and it shall also keep an account of the money received from each individual employer and

the amount disbursed from the state insurance fund on account of injuries and death of the employes of such employer.

2. Ten per cent. of the money that has heretofore been paid into the state insurance fund and ten per cent. of all that may hereafter be paid into such fund shall be set aside for the creation of a surplus until such surplus shall amount to the sum of one hundred thousand dollars (\$100,000.00), after which time the sum of five per cent. of all the money paid into the state insurance fund shall be credited to such surplus fund, until such time as, in the judgment of the board, such surplus shall be sufficiently large to guarantee a state insurance fund from year to year.

3. On the first day of July, 1914, and semi-annually thereafter, a readjustment of the rates shall be made for each of the several classes of occupation or industry which, in the judgment of the board, have developed an average loss ratio, in accordance with the experience of the board in the administration of the law as shown by the accounts kept as provided herein.

4. Should any such accounting show a balance remaining to the credit of any class of occupation or industry, after the above-mentioned amounts have been credited to the surplus fund and after the payment of all awards for injury or death lawfully chargeable against the same, the premium rate for such class shall be reduced; and, each individual member of such class, who has been a subscriber to the state insurance fund for a period of six months or longer prior to the time of such readjustment, and whose premium or premiums so paid to the fund exceeds the amount of the disbursements from the fund on account of injuries or death to his employes during such period, shall be entitled to a credit on the installment or installments of premium next due from him, the amount of which credit shall be such proportion of said balance as the amount of his prior paid premiums sustains to the whole amount of said premiums paid by the class to which he belongs since the last readjustment of rates.

§ 8. (1465-55) Rules for administration of fund.—The state liability board of awards shall adopt rules and regulations with respect to the collection, maintenance and disbursement of the state insurance fund; one of which rules shall provide that in the event the amount of premiums collected from any employer at the beginning of any period of six months is ascertained and calculated by using the estimated expenditure of wages for the period of time covered by such premium payments as a basis, that an adjustment of the amount of such premium shall be made at the end of such six months period and the actual amount of such premium shall be determined in accordance with the amount of the actual expenditure of wages for said period; and, in the event such wage expenditure for said period is less than the amount on which such estimated premium was collected, then such employer shall be entitled to receive a refunder from the state insurance fund of the difference between the amount so paid by him and the amount so found to be actually due, or to have the amount of such difference credited on succeeding premium payments at his option, and should such actual premium, when ascertained as aforesaid exceed in amount the premium so paid by such employer at the beginning of such six months' period, such employer shall immediately upon being advised of the true amount of such premium due, forthwith pay to the treasurer of state an amount equal to the difference between the amount actually found to be due and the amount paid by him at the beginning of said six months' period.

§ 9. (1465-56) **Custodian of fund.**—The treasurer of state shall be the custodian of the state insurance fund and all disbursements therefrom shall be paid by him upon vouchers authorized by the state liability board of awards and signed by any two members of the board; or, such vouchers may bear the fac-simile signatures of the board members printed thereon, and the signature of the chief of the auditing department.

§ 10. (1465-57) **Deposit of part of fund.**—The treasurer of state is hereby authorized to deposit any portion of the state insurance fund not needed for immediate use, in the same manner and subject to all the provisions of the law with respect to the deposit of state funds by such treasurer; and all interest earned by such portion of the state insurance fund as may be deposited by the state treasurer in pursuance of authority herein given, shall be collected by him and placed to the credit of such fund.

§ 11. (1465-58) **Investment of fund.**—The state liability board of awards shall have the power to invest any of the surplus or reserve belonging to the state insurance fund in bonds of the United States, the state of Ohio, or of any county, city, village or school district of the state of Ohio, at current market prices for such bonds; provided that such purchase be authorized by a resolution adopted by the board and approved by the governor; and it shall be the duty of the boards or officers of the several taxing districts of the state in the issuance and sale of bonds of their respective taxing districts, to offer in writing to the state liability board of awards, prior to advertising the same for sale, all such issues as may not have been taken by the trustees of the sinking fund of the taxing district so issuing such bonds; and said board shall, within ten days after the receipt of such written offer either accept the same and purchase such bonds or any portion thereof at par and accrued interest, or reject such offer in writing; and all such bonds so purchased forthwith shall be placed in the hands of the treasurer of state, who is hereby designated as custodian thereof, and it shall be his duty to collect the interest thereon as the same becomes due and payable, and also the principal thereof, and to pay the same, when so collected, into the state insurance fund. The treasurer of state shall honor and pay all vouchers drawn on the state insurance fund for the payment of such bonds when signed by any two members of the board, upon delivery of said bonds to him when there is attached to such voucher a certified copy of such resolution of the board authorizing the purchase of such bonds; and the board may sell any of said bonds upon like resolution, and the proceeds thereof shall be paid by the purchaser to the treasurer of state upon delivery to him of said bonds by the treasurer.

§ 12. (1465-59) **Bond of treasurer.**—The treasurer of state shall give a separate and additional bond in such amount as may be fixed by the governor, and with sureties to his approval, conditioned for the faithful performance of his duties as custodian of the state insurance fund.

§ 13. (1465-60) **"Employer" defined.**—The following shall constitute employers subject to the provisions of this act:

1. The state and each county, city, township, incorporated village and school district therein.

2. Every person, firm, and private corporation including any public service corporation that has in service five or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract of hire, express, or implied, oral or written.

§ 14. (1465-61) "Employé defined.—The terms "employé," "workman" and "operative" as used in this act, shall be construed to mean:

1. Every person in the service of the state, or of any county, city, township, incorporated village or school district therein, including regular members of lawfully constituted police and fire departments of cities and villages, under any appointment or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city, township, incorporated village or school district therein. Provided that nothing in this act shall apply to policemen or firemen in cities where policemen's and firemen's pension funds are now or hereafter may be established and maintained by municipal authority under existing laws.

2. Every person in the service of any person, firm or private corporation, including any public service corporation employing five or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work for hire under the laws of the state, but not including any person whose employment is but casual, or not in the usual course of trade, business, profession or occupation of his employer.

§ 15. (1465-62) Contributions based on payroll.—Every employer mentioned in subdivision one of section thirteen hereof, shall contribute to the state insurance fund in proportion to the annual expenditure of money by such employer for the service of persons described in subdivision one of section fourteen hereof, the amount of such payments and the method of making the same to be determined as hereinafter provided.

§ 16. (1465-63) Contribution of state.—The amount of money to be contributed by the state itself, and by each county, city, incorporated village, school district or other taxing district of the state shall be, unless otherwise provided by law, a sum equal to one per centum of the amount of money expended by the state and for each county, city, incorporated village, school district or other taxing district respectively during the next preceding fiscal year for the service of persons described in subdivision one of section fourteen hereof.

§ 17. (1465-64) Same—Method of payment.—In the month of January in the year 1914 the auditor of state shall draw his warrant on the treasurer of state, in favor of said treasurer as custodian of the state insurance fund, and for deposit to the credit of said fund, for a sum equal to one per centum of the amount of money expended by the state during the last preceding fiscal year, for the service of persons described in subdivision one of section fourteen hereof, which said sums are hereby appropriated and made available for such payments; and thereafter in the month of January of each year, such sums of money shall in like manner be paid into the state insurance fund as may be provided by law; and it shall be the duty of the Industrial Commission of Ohio to communicate to the general assembly on the first day of each regular session thereof, an estimate of the aggregate amount of money necessary to be contributed by the state during the two years next ensuing as its proper portion of the state insurance fund. [As amended 105 O. L. —.]

§ 18. (1465-65) Lists of compensation of public employés.—In the month of December of each year, the auditor of state shall prepare a list for each county of the state, showing the amount of money expended by each

township, city, village, school district or other taxing district therein for the service of persons described in subdivision one of section fourteen hereof, during the fiscal year last preceding the time of preparing such lists; and shall file a copy of each such list with the auditor of the county for which such list was made, and copies of all such lists with the treasurer of state. Such lists shall also show the amount of money due from the county itself, and from each city, township, village, school district and other taxing district thereof, as its proper contribution to the state insurance fund, and the aggregate sum due from the county and such taxing districts located therein.

Provided, however, that should the Industrial Commission of Ohio on or before the first day of December in any year certify to the auditor of state that sufficient money is in the state insurance fund to the credit of any county or counties to provide for the payment of compensation to the injured and to the dependents of killed employes of such county or counties and the several taxing districts therein for the ensuing year, the auditor of state shall not prepare and file with the county auditors and the treasurer of state said list or lists for such county or counties specified in such certificate; and it shall be the duty of the Industrial Commission of Ohio to make and file such certificate with the auditor of state whenever in its judgment there is sufficient money in the state insurance fund to the credit of any county or counties to provide for the probable disbursements required to be made to the injured and to the dependents of killed employes of such county or counties and the several taxing districts therein for the ensuing year. [As amended 105 O. L. —.]

§ 19. (1465-66) Payment of premiums by counties.—In January of each year following the filing with him of the lists mentioned in the last preceding section hereof, beginning with January, 1914, the auditor of each county shall issue his warrant in favor of the treasurer of state of Ohio on the county treasurer of his county, for the aggregate amount due from such county and from the taxing districts therein, to the state insurance fund, and the county treasurer shall pay the amount called for by such warrant from the county treasury, and the county auditor shall charge the amount so paid to the county itself and the several taxing districts therein as shown by such lists; and the treasurer of state shall immediately upon receiving such money, convert the same into the state insurance fund.

§ 20. (1465-67) Report of treasurer—Default of payment.—In February of each year the treasurer of state shall certify to the state liability board of awards the amount of money that has been paid to him for credit to the state insurance fund as provided in the foregoing sections and the amount paid by the state itself and by each county, city, incorporated village or school district therein, and at the same time shall certify to the board the names of such as may have made default in the payments hereinbefore provided and the respective amounts for which they are in default. When any default is made in the payment of the sums hereinbefore required to be contributed to the state insurance fund, or when any official fails, neglects or refuses to perform any act or acts required to be performed by him with reference to the making of such payments, it shall be the duty of the state liability board of awards forthwith to institute the proper proceedings in court to compel such payment or payments to be made.

The state liability board of awards shall keep a separate account of the money paid into the state insurance fund by the state and its political sub-

divisions as hereinbefore provided and the disbursements made therefrom on account of injuries to public employes.

§ 21. (1465-68) Compensation provided.—Every employé mentioned in subdivision one of section fourteen hereof, who is injured, and the dependents of such as are killed in the course of employment, wheresoever such injury has occurred, provided the same was not purposely self-inflicted, on or after January 1st, 1914, shall be paid such compensation out of the state insurance fund for loss sustained on account of such injury or death as is provided in the case of other injured or killed employes, and shall be entitled to receive such medical, nurse and hospital services and medicines, and such amount of funeral expenses as are payable in the case of other injured or killed employes.

Every employé mentioned in subdivision two of section fourteen hereof, who is injured, and the dependents of such as are killed in the course of employment, wheresoever such injury has occurred, provided the same was not purposely self-inflicted, on and after January 1st, 1914, shall be entitled to receive, either directly from his employer as provided in section twenty-two hereof, or from the state insurance fund, such compensation for loss sustained on account of such injury or death, and such medical, nurse and hospital services and medicines, and such amount of funeral expenses in case of death as is provided by sections thirty-two to forty inclusive of the act.

§ 22. (1465-69) Semi-annual contributions—Substitute schemes.—Except as hereinafter provided, every employer mentioned in subdivision two of section thirteen hereof shall, in the month of January, 1914, and semi-annually thereafter, pay into the state insurance fund the amount of premium determined and fixed by the state liability board of awards for the employment or occupation of such employer the amount of which premium to be so paid by each such employer to be determined by the classifications, rules and rates made and published by the board; and such employer shall semi-annually thereafter pay such further sum of money into the state insurance fund as may be ascertained to be due from him by applying the rules of the board, and a receipt or certificate certifying that such payment has been made shall immediately be mailed to such employer by the state liability board of awards, which receipt or certificate, attested by the seal of the board shall be prima facie evidence of the payment of such premium.

Provided, however, that as to all employers who are subscribers to the state insurance fund at the time of the taking effect of this act, or who may before January 1st, 1914, elect to become subscribers thereto, the foregoing provisions for the payment of such premiums in the month of January, 1914, and semi-annually thereafter shall not apply, but such subsequent semi-annual premiums shall be paid by such employers from time to time upon the expiration of the respective periods for which payments into the fund have been made by them. And provided further, that such employers who will abide by the rules of the state liability board of awards and as may be of sufficient financial ability or credit to render certain the payment of compensation to injured employes or to the dependents of killed employes, and the furnishing of medical, surgical, nursing and hospital attention and services and medicines, and funeral expenses equal to or greater than is provided for in this act, or such employers as maintain benefit funds or departments or jointly with other employers maintain mutual associations of such said financial ability or credit, to which their employes are not required or permitted di-

rectly or indirectly to contribute, providing for the payment of such compensation and the furnishing of such medical, surgical, nursing and hospital services and attention and funeral expenses, may, upon a finding of such facts by the state liability board of awards elect to pay individually or from such benefit fund department or association such compensation, and furnish such medical, surgical, nursing and hospital services and attention and funeral expenses directly to such injured or the dependents of such killed employes; and the state liability board of awards may require such security or bond from said employers as it may deem proper, adequate and sufficient to compel, or secure to such injured employes, or to the dependents of such employes as may be killed, the payment of the compensation and expenses herein provided for, which shall in no event be less than that paid or furnished out of the state insurance fund, in similar cases, to injured employes or to the dependents of killed employes, whose employers contribute to said fund; and said board shall make and publish rules and regulations governing the mode and manner of making application and the nature and extent of the proof required to justify such finding of facts by the board as to permit such election by such employers, which rules and regulations shall be general in their applications, one of which rules shall provide that all employers' electing directly to compensate their injured and the dependents of their killed employes as hereinbefore provided, shall pay into the state insurance fund such amount or amounts as are required to be credited to the surplus in paragraph two of section seven hereof.

The state liability board of awards may at any time change or modify its finding of facts herein provided for, if in its judgment such action is necessary or desirable to secure or assure a strict compliance with all the provisions of this act in reference to the payment of compensation and the furnishing of medical, nurse, and hospital services and medicines and funeral expenses to injured and the dependents of killed employes.

§ 23. (1465-70) Exclusive liability in certain cases.—Employers who comply with the provisions of the last preceding section shall not be liable to respond in damages at common law or by statute, save as hereinafter provided, for injury or death of any employe, wherever occurring, during the period covered by such premium so paid into the state insurance fund, or during the interval of time in which such employer is permitted to pay such compensation direct to his injured or the dependents of his killed employes as herein provided.

§ 24. (1465-71) Same—Employers of less than five—Notice of insurance.—Any employer who employs less than five workmen or operatives regularly in the same business, or in or about the same establishment, who shall pay into the state insurance fund the premiums provided by this act, shall not be liable to respond in damages at common law or by statute, save as hereinafter provided, for injuries or death of any such employes, wherever occurring, during the period covered by such premiums, provided the injured employe has remained in his service with notice that his employer has paid into the state insurance fund the premiums provided by this act; the continuation in the service of such employer with such notice shall be deemed a waiver by the employe of his right of action as aforesaid.

Each such employer paying the premiums provided by this act into the state insurance fund, or electing directly to pay compensation to his injured,

or the dependents of his killed employes as provided in section twenty-two hereof, shall post in conspicuous places about his place or places of business typewritten or printed notices stating the fact that he has made such payment, or that he has complied with the provisions of said section twenty-two hereof and all of the rules and regulations of the state liability board of awards made in pursuance thereof, and has been authorized by said board directly to compensate such said employes or dependents; and the same, when so posted shall constitute sufficient notice to his employes of the fact that he has made such payment, or that he has complied with such elective provision of section twenty-two; and of any subsequent payments he may make after such notices have been posted.

§ 25. (1465-72) Liability for compensation.—The state liability board of awards shall disburse the state insurance fund to such employes of employers as have paid into said fund the premiums applicable to the classes to which they belong, who have been injured in the course of their employment, wheresoever such injuries have occurred, and which have not been purposely self-inflicted, or to their dependents in case death has ensued. All employers electing directly to compensate their injured employes, in compliance with this act, shall pay to such injured employes, or to the dependents of employes who have been killed in the course of their employment, unless such injury or death of such employe has been purposely self-inflicted, the compensation, and shall furnish such medical, surgical, nurse and hospital care and attention or funeral expenses as would have been paid and furnished by virtue of this act under a similar state of facts, by the state liability board of awards out of the state insurance fund, in case said employer had paid the premium provided by this act, into said fund.

Provided, however, that if any rule or regulation of such employer so directly compensating his employes, shall provide for or authorize the payment of greater compensation or more complete or extended medical care, nursing, surgical and hospital attention or funeral expenses to such injured employes, or to the dependents of such employes as may be killed, such employer shall be required to pay to such employes, or to the dependents of such as are killed, the amount of compensation and furnish such medical care, nursing, surgical and hospital attention or funeral expenses provided by his said rules and regulations.

And such payment or payments to such injured employes, or to their dependents in case death has ensued, shall be in lieu of any and all rights of action whatsoever against the employer of such injured or killed employes.

§ 26. (1465-73) Liability for damages—Abolition of defenses.—Employers mentioned in subdivision two of section thirteen hereof, who shall fail to comply with the provisions of section twenty-two hereof, shall not be entitled to the benefits of this act during the period of such non-compliance, but shall be liable to their employes for damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect or default of the employer, or any of the employer's officers, agents or employes, and also to the personal representatives of such employes where death results from such injuries, and in such action the defendant shall not avail himself or itself of the following common law defenses:

The defense of the fellow-servant rule, the defense of the assumption of risk or the defense of contributory negligence.

And such employers shall also be subject to the provisions of the two sections next succeeding.

§ 27. (1465-74) Action where employer has not insured—Procedure before Board.—Any employé whose employer has failed to comply with the provisions of section twenty-two hereof, who has been injured in the course of his employment, wheresoever such injury has occurred, and which was not purposely self-inflicted, or his dependents in case death has ensued, may, in lieu of proceedings against his employer by civil action in the courts, as provided in the last preceding section, file his application with the state liability board of awards for compensation in accordance with the terms of this act, and the board shall hear and determine such application for compensation in like manner as in other claims before the board; and the amount of the compensation which said board may ascertain and determine to be due to such injured employé, or to his dependents in case death has ensued, shall be paid by such employer to the person entitled thereto within ten days after receiving notice of the amount thereof as fixed and determined by the board; and in the event of the failure, neglect or refusal of the employer to pay such compensation to the person entitled thereto, within said period of ten days, the same shall constitute a liquidated claim for damages against such employer in the amount so ascertained and fixed by the board, which with an added penalty of fifty per centum, may be recovered in an action in the name of the state for the benefit of the person or persons entitled to the same. And any employé whose employer has elected to pay compensation to his injured, or to the dependents of his killed employés in accordance with the provisions of section twenty-two hereof, may, in the event of the failure of his employer to so pay such compensation or furnish such medical, surgical, nursing and hospital services and attention or funeral expenses, file his application with the state liability board of awards for the purpose of having the amount of such compensation and such medical, surgical, nursing and hospital services and attention or funeral expenses determined; and thereupon like proceedings shall be had before the board and with like effect as hereinbefore provided.

And the state liability board of awards shall adopt and publish rules and regulations governing the procedure before the board provided in this section, and shall prescribe forms of notices and the mode and manner of serving the same in all claims for compensation arising under this section. Any suit, action or proceeding brought against any employer under the provisions of this section, may be compromised by the board, or such suit, action or proceeding may be prosecuted to final judgment as in the discretion of the board may best subserve the interests of the persons entitled to receive such compensation.

§ 28. (1465-75) Collection of payments from defaulting employers.—If any employer shall default in any payment required to be made by him to the state insurance fund, the amount due from him shall be collected by civil action against him in the name of the state as plaintiff; and it shall be the duty of the state liability board of awards on the first Monday in February, 1914, and on the first Monday of each month thereafter, to certify to the attorney general of the state the names and residences of all employers known to the board to be in default for such payments for a longer period than five days, and the amount due from each such employer, and it shall

then be the duty of the attorney general forthwith to bring, or cause to be brought against each such employer a civil action in the proper court for the collection of such amount so due and the same when collected, shall be paid into the state insurance fund, and such employer's compliance with the provisions of this act requiring payments to be made to the state insurance fund shall date from the time of the payment of said money so collected as aforesaid to the treasurer of state for credit to the state insurance fund.

§ 29. (1465-76) Civil liability—Election of employé.—But where a personal injury is suffered by an employé or where death results to an employé from personal injury while in the employ of an employer in the course of employment and such employer has paid into the state insurance fund the premium provided for in this act, or is authorized directly to compensate such employé or dependents by virtue of compliance with section 22 of this act, and in case such injury has arisen from the wilful act of such employer or any of such employer's officers or agents, or from the failure of such employer or any of such employer's officers or agents to comply with any lawful requirement for the protection of the lives and safety of employés, then in such event, nothing in this act contained shall affect the civil liability of such employer, but such injured employé, or his legal representative in case death results from the injury, may, at his option, either claim compensation under this act or institute proceedings in the courts for his damage on account of such injury; and such employer shall not be liable for any injury to any employé or his legal representative in case death results, except as provided in this section; and in all actions authorized by this section, the defendant shall be entitled to plead the defense of contributory negligence and the defense of the fellow servant rule; and, in all cases determined in court as authorized by this section, when a judgment is awarded the plaintiff, the court shall determine, fix and award the amount of fee or fees to be paid plaintiff's attorney or attorneys, any contract to the contrary notwithstanding.

Every employé, or his legal representative in case death results, who makes application for an award, or accepts compensation from an employer who elects, under section 22 of this act, directly to pay such compensation waives his right to exercise his option to institute proceedings in any court, except as provided in section 43 hereof. Every employé, or his legal representative in case death results, who exercises his option to institute proceedings in court, as provided in this section, waives his right to any award, or direct payment of compensation from his employer under section 22 hereof, as provided in this act.

The term "wilful act," as employed in this section, shall be construed to mean an act done knowingly and purposely with the direct object of injuring another. [104 O. L. 193.]

Note.—The foregoing section, as amended at the extraordinary session of the General Assembly of 1914, became effective May 22, 1914.

§ 30. (1465-77) Preference of compensation claims.—All judgments obtained in any action prosecuted by the board or by the state under the authority of this act shall have the same preference against the assets of the employer as is now or may hereafter be allowed by law on judgments rendered for claims for taxes.

§ 31. (1465-78) Waiting period.—No compensation shall be allowed for the first week after the injury is received, except the disbursement here-

inafter authorized for medical, nurse and hospital services and medicines, and for funeral expenses.

§ 32. (1465-79) **Total temporary disability.**—In case of temporary disability, the employé shall receive sixty-six and two-third per cent. of his average weekly wages so long as such disability is total, not to exceed a maximum of twelve dollars per week, and not less than a minimum of five dollars per week, unless the employé's wages shall be less than five dollars per week, in which event he shall receive compensation equal to his full wages; but in no case to continue for more than six years from the date of the injury, or to exceed three thousand, seven hundred and fifty dollars.

§ 33. (1465-80) **Schedule of compensation.**—In case of injury resulting in partial disability, the employé shall receive sixty-six and two-thirds per cent. of the impairment of his earning capacity during the continuance thereof, not to exceed a maximum of twelve dollars per week, or a greater sum in the aggregate than thirty-seven hundred and fifty dollars. In cases included in the following schedule, the disability in each case shall be deemed to continue for the period specified and the compensation so paid for such injury shall be as specified herein, to-wit:

For the loss of a thumb, 66% of the average weekly wages during sixty weeks.

For the loss of a first finger, commonly called index finger, 66% of the average weekly wages during thirty-five weeks.

For the loss of a second finger, 66% of the average weekly wages during thirty weeks.

For the loss of a third finger, 66% of the average weekly wages during twenty weeks.

For the loss of a fourth finger, commonly known as the little finger, 66% of the average weekly wages during fifteen weeks.

The loss of the second, or distal phalange, of the thumb shall be considered to be equal to the loss of one-half of such thumb; the loss of more than one-half of such thumb shall be considered to be equal to the loss of the whole thumb.

The loss of the third, or distal phalange, of any finger shall be considered to be equal to the loss of one-third of such finger.

The loss of the middle, or second phalange, of any finger shall be considered to be equal to the loss of two-thirds of such finger.

The loss of more than the middle and distal phalanges of any finger shall be considered to be equal to the loss of the whole finger; provided, however, that in no case will the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of the metacarpal bone (bones of palm) for the corresponding thumb, finger, or fingers as above, add ten weeks to the number of weeks as above.

For ankylosis (total stiffness of) or contractures (due to scars or injuries) which makes the fingers more than useless, the same number of weeks apply to such finger or fingers (not thumb) as given above.

For the loss of a hand, 66% of the average weekly wages during one hundred and fifty weeks.

For the loss of an arm, 66% of the average weekly wages during two hundred weeks.

For the loss of a great toe, 66⅔% of the average weekly wages during thirty weeks.

For the loss of one of the toes other than the great toe, 66⅔% of the average weekly wages during ten weeks.

The loss of more than two-thirds of any toe shall be considered to be equal to the loss of the whole toe.

The loss of less than two-thirds of any toe shall be considered to be no loss.

For the loss of a foot, 66⅔% of the average weekly wages during one hundred and twenty-five weeks.

For the loss of a leg, 66⅔% of the average weekly wages during one hundred and seventy-five weeks.

For the loss of an eye, 66⅔% of the average weekly wages during one hundred weeks.

The amounts specified in this clause are all subject to the limitation as to the maximum weekly amount payable as hereinbefore specified in this section.

§ 34. (1465-81) Permanent total disability.—In cases of permanent total disability, the award shall be sixty-six and two-thirds per cent. of the average weekly wages, and shall continue until the death of such person so totally disabled, but not to exceed a maximum of twelve dollars per week and not less than a minimum of five dollars per week, unless the employé's average weekly wages are less than five dollars per week at the time of the injury, in which event he shall receive compensation in an amount equal to his average weekly wages.

The loss of both hands or both arms, or both feet or both legs, or both eyes, or of any two thereof, shall prima facie constitute total and permanent disability, to be compensated according to the provisions of this section.

§ 35. (1465-82) Death benefits—Who are dependents.—In case the injury causes death within the period of two years, the benefits shall be in the amounts and to the persons following:

1. If there be no dependents, the disbursements from the state insurance fund shall be limited to the expenses provided for in section forty-two hereof.

2. If there are wholly dependent persons at the time of the death, the payment shall be sixty-six and two-thirds per cent. of the average weekly wages, and to continue for the remainder of the period between the date of the death, and six years after the date of the injury, and not to amount to more than a maximum of thirty-seven hundred and fifty dollars, nor less than a minimum of one thousand five hundred dollars.

3. If there are partly dependent persons at the time of the death, the payment shall be sixty-six and two-thirds per cent. of the average weekly wages, and to continue for all or such portion of the period of six years after the date of the injury, as the board in each case may determine, and not to amount to more than a maximum of thirty-seven hundred and fifty dollars.

4. The following persons shall be presumed to be wholly dependent for support upon a deceased employé:

(A) A wife upon a husband with whom she lives at the time of his death.

(B) A child or children under the age of sixteen years (or over said age if physically or mentally incapacitated from earning) upon the parent with whom he is living at the time of the death of such parent.

In all other cases, question of dependency, in whole or in part, shall be determined in accordance with the facts in each particular case existing at

the time of the injury resulting in the death of such employé, but no person shall be considered as dependent unless a member of the family of the deceased employé, or bears to him the relation of husband or widow, lineal descendant, ancestor or brother or sister. The word "child" as used in this act, shall include a posthumous child, and a child legally adopted prior to the injury.

Note.—An Act was passed by the General Assembly at its regular session in 1913, approved by the Governor and filed in the office of the Secretary of State May 7, 1913, and became effective August 6, 1913, sections 1 and 2 of which were as follows;

"Section 1. That it shall be unlawful for the state liability board of awards, or any other body constituted by the statutes of the state of Ohio, or any court of said state, in awarding compensation to the dependents of employés, or others killed in Ohio, to make any discrimination against the widows, children, or other dependents, who shall reside in a foreign country; and it shall be the duty of the state liability board of awards, or any other board or court, in determining the amount of compensation to be paid to the dependents of killed employés, to pay to the alien dependents residing in foreign countries the same benefits as to those dependents residing in the state of Ohio.

"Section 2. When the dependents of killed employés reside in a foreign country, the consular general, consul, vice-consul, or consular agent, duly accredited to the consular district within which such killed employé lived at the time of his decease by the country wherein such dependents of the killed employé reside, shall furnish the necessary information regarding such dependents of killed employés so that the state liability board of awards may transmit to such dependents the funds provided for in the compensation act of the state of Ohio, or any amendments thereto."

§ 36. (1465-83) Payment to representative—Apportionment.—The benefits in case of death, shall be paid to such one or more of the dependents of the decedent, for the benefit of all the dependents as may be determined by the board, which may apportion the benefits among the dependents in such manner as it may deem just and equitable. Payment to a dependent subsequent in right may be made, if the board deems it proper, and shall operate to discharge all other claims therefor. The dependents or person to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof according to their respective claims upon the decedent for support, in compliance with the finding and direction of the board.

In all cases of death where the dependents are a widow and one or more minor children, it shall be sufficient for the widow to make application to the board on behalf of herself and minor children; and in cases where all of the dependents are minors, the application shall be made by the guardian or next friend of such minor dependents.

§ 37. (1465-84) Basis of compensation.—The average weekly wage of the injured person at the time of the injury shall be taken as the basis upon which to compute the benefits.

§ 38. (1465-85) Probable increase in wages.—If it is established that the injured employé was of such age and experience when injured as that under natural conditions his wages would be expected to increase, the fact may be considered in arriving at his average weekly wage.

§ 39. (1465-86) Continuing jurisdiction.—The powers and jurisdiction of the board over each case shall be continuing, and it may from time to time make such modification or change with respect to former findings or orders with respect thereto, as, in its opinion may be justified.

§ 40. (1465-87) Commutation to lump sum.—The board, under special circumstances, and when the same is deemed advisable, may commute periodical benefits to one or more lump sum payments.

§ 41. (1465-88) **Exemption of claims.**—Compensation before payment shall be exempt from all claims or creditors and from any attachment or execution, and shall be paid only to such employes or their dependents.

§ 42. (1465-89) **Medical and hospital expenses.**—In addition to the compensation provided for herein, the board shall disburse and pay from the state insurance fund, such amounts for medical, nurse and hospital services and medicine as it may deem proper, not, however, in any instance, to exceed the sum of two hundred dollars; and, in case death ensues from the injury, reasonable funeral expenses shall be disbursed and paid from the fund in an amount not to exceed the sum of one hundred and fifty dollars, and the board shall have full power to adopt rules and regulations with respect to furnishing medical, nurse and hospital service and medicine to injured employes entitled thereto, and for the payment therefor.

§ 43. (1465-90) **Jurisdiction of board—Appeal.**—The board shall have full power and authority to hear and determine all questions within its jurisdiction, and its decision thereon shall be final. Provided, however, in case the final action of such board denies the right of the claimant to participate at all in such fund on the ground that the injury was self-inflicted or on the ground that the accident did not arise in the course of employment, or upon any other ground going to the basis of the claimant's right, then the claimant, within thirty (30) days after the notice of the final action of such board, may, by filing his appeal in the common pleas court of the county wherein the injury was inflicted, be entitled to a trial in the ordinary way, and be entitled to a jury if he demands it. In such a proceeding, the prosecuting attorney of the county, without additional compensation, shall represent the state liability board of awards, and he shall be notified by the clerk forthwith of the filing of such appeal.

Within thirty days after filing his appeal, the appellant shall file a petition in the ordinary form against such board as defendant, and further pleadings shall be had in said cause, according to the rules of civil procedure, and the court, or the jury, under the instructions of the court, if a jury is demanded, shall determine the right of the claimant; and if they determine the right in his favor, shall fix his compensation within the limits under the rules prescribed in this act; and any final judgment so obtained shall be paid by the state liability board of awards out of the state insurance fund in the same manner as such awards are paid by such board.

The cost of such proceeding, including a reasonable attorney's fee to the claimant's attorney to be fixed by the trial judge, shall be taxed against the unsuccessful party.

Either party shall have the right to prosecute error as in the ordinary civil cases.

§ 44. (1465-91) **Extraordinary procedure.**—Such board shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than as herein provided; but may make the investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this act.

§ 45. (1465-92) **Not measure of damages.**—No provision of this act relating to the amount of compensation shall be considered by, or called to the attention of the jury on the trial of any action to recover damages as herein provided.

§ 46. (1465-93) **Minors sui juris.**—A minor working at an age legally permitted under the laws of this state, shall be deemed sui juris for the purposes of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman, but in the event of the award of a lump sum of compensation to such minor employé, such sum shall be paid only to the legally appointed guardian of such minor.

§ 47. (1465-94) **Waiver of right to compensation—Contribution to premium.**—No agreement by an employé to waive his rights to compensation under this act shall be valid. No agreement by an employé to pay any portion of the premium paid by his employer into the state insurance fund shall be valid, and any employer who deducts any portion of such premium from the wages or salary of any employé entitled to the benefits of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one hundred dollars for each such offense.

§ 48. (1465-95) **Medical examination.**—Any employé claiming the right to receive compensation under this act may be required by the board or its chief medical examiner, to submit himself for medical examination at any time and from time to time at a place reasonably convenient for such employé, and as may be provided by the rules of the board. If such employé refuses to submit to any such examination or obstructs the same, his right to have his claim for compensation considered, if his claim be pending before the board, or to receive any payments for compensation theretofore granted shall be suspended during the period of such refusal or obstruction.

§ 49. (1465-96) **Inspection of employer's records.**—All books, records and payrolls of the employers of the state, showing or reflecting in any way upon the amount of wage expenditure of such employers, shall always be open for inspection by the board or any of its traveling auditors, inspectors or assistants, for the purpose of ascertaining the correctness of the wage expenditure, the number of men employed, and such other information as may be necessary for the uses and purposes of the board in its administration of the law. Refusal on the part of any employer to submit his books, records and payrolls for the inspection of any member of the board or traveling auditor, inspector or assistant presenting written authority from the board, shall subject such employer to a penalty of one hundred dollars (\$100.00) for each such offense, to be collected by civil action in the name of the state, and paid into the state insurance fund to become a part thereof.

§ 50. (1465-97) **Misrepresentation of payroll.**—Any employer who misrepresents to the board the amount of payroll upon which the premium under this act is based, shall be liable to the state in ten times the amount of the difference in premium paid and the amount the employer should have paid. The liability to the state under this section shall be enforced in a civil action in the name of the state, and all sums collected under this section shall be paid into the state insurance fund.

§ 51. (1465-98) **Employés engaged in interstate commerce.**—The provisions of this act shall apply to employers and their employés engaged in intrastate and also in interstate and foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, and then only when such employer

and any of his workmen working only in this state, with the approval of the state liability board of awards, and so far as not forbidden by any act of congress, voluntarily accept the provisions of this act by filing written acceptances, which, when filed with and approved by the board, shall subject the acceptors irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms, during the period or periods for which the premiums herein provided have been paid. Payment of premium shall be on the basis of the payroll of the workmen who accept as aforesaid.

§ 52. (1465-99) Employer's report of accident.—Every employer of the state shall keep a record of all injuries, fatal or otherwise, received by his employes in the course of their employment. Within a week after the occurrence of an accident resulting in personal injury, a report thereof shall be made in writing to the state liability board of awards upon blanks to be procured from the board for that purpose. Such report shall contain the name and nature of the business of the employer, the location of his establishment or place of work, the name, address and occupation of the injured employé, and shall state the time, the nature and cause of injury and such other information as may be required by the board. Any employer who refuses or neglects to make any report required by this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00) for such offense.

§ 53. (1465-100) Duty of attorney general.—Upon the request of the board, the attorney general, or under his direction, the prosecuting attorney of any county shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of this act, or for the recovery of any money due the state insurance fund, or any penalty herein provided for, arising within the county in which he was elected, and shall defend in like manner all suits, actions or proceedings brought against the board or the members thereof in their official capacity.

§ 54. (1465-101) Contracting out.—All contracts or agreements entered into by any employer, the purpose of which is to indemnify him from loss or damage on account of the injury of such employé by accidental means or on account of the negligence of such employer or such employer's officer, agent or servant, shall be absolutely void, unless such contract or agreement shall specifically provide for the payment to such injured employé of such amounts for medical, nurse and hospital services and medicines, and such compensation as is provided by this act for injured employés; and in the event of death shall pay such amounts as are herein provided for funeral expenses and for compensation to the dependents of those partially dependent upon such employé; and no such contract shall agree, or be construed to agree, to indemnify such employer, other than hereinbefore designated, for any civil liability for which he may be liable on account of the injury to his employé by the wilful act of such employer, or any of such employer's officers or agents, or the failure of such employer, his officers or agents, to observe any lawful requirement for the safety of employés.

§ 55. (1465-102) Payment of expenses.—The board may make necessary expenditures to obtain statistical and other information to establish the classes provided for in section six hereof. The salaries and compensation of the members of the board, of the secretary and all actuaries, ac-

countants, inspectors, examiners, experts, clerks, physicians, stenographers and other assistants, and all other expenses of the board herein authorized, including the premium to be paid by the state treasurer for the bond to be furnished by him, shall be paid out of the state treasury upon vouchers signed by two of the members of such board and presented to the auditor of state, who shall issue his warrant therefor as in other cases.

§ 56. (1465-103) **Annual report of board.**—Annually on or before the 15th day of December, such board, under the oath of at least two of its members, shall make a report to the governor for the preceding fiscal year, which shall include a statement of the number of awards made by it, and a general statement of the causes of accidents leading to the injuries for which the awards were made, a detailed statement of the disbursements from the expense fund, and the condition of its respective funds, together with any other matters which the board deems proper to call to the attention of the governor, including any recommendations it may have to make, and it shall be the duty of the board from time to time to publish and distribute among employers and employes, such general information as to the business transacted by the department as in its judgment may be useful.

§ 57. (1465-104) **Publication of rules.**—The board shall cause to be printed in proper form for distribution to the public its classifications, rates, rules, regulations and rules of procedure, and shall furnish the same to any person upon application therefor, and the fact that such classifications, rates, rules, regulations and rules of procedure are printed ready for distribution to all who apply for the same, shall be a sufficient publication of the same as required by this act.

Note.—See section 34 of 103 O. L. 95, for a similar provision.

§ 58. (1465-105) **Indemnity from injunction.**—No injunction shall issue suspending or restraining any order, classification or rate adopted by the board, or any action of the auditor of state, treasurer of state, attorney general, or the auditor or treasurer of any county, required to be taken by them or any of them by any of the provisions of this act; but nothing herein shall effect any right or defense in any action brought by the board or the state in pursuance of authority contained in this act.

Note.—See section 40 of 103 O. L. 95.

§ 59. (1465-106) **Constitutionality.**—Should any section or provision of this act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the act as a whole or any part thereof other than the part so decided to be unconstitutional.

Note.—See section 45 of 103 O. L. 95.

§ 60. (1465-107) **Repeal.**—That sections 1465-42, 1465-43, 1465-45, 1465-46, 1465-53, 1465-54, 1465-55, 1465-56, 1465-58, 1465-62, 1465-63, 1465-64, 1465-65, 1465-66, 1465-67, 1465-68, 1465-69, 1465-70, 1465-71, 1465-72, 1465-73, 1465-74, 1465-75, 1465-76, 1465-77, 1465-78 and 1465-79 of the General Code are hereby repealed; and sections 1465-57, 1465-59, 1465-60 and 1465-61 of the General Code are hereby repealed, such repeal to take effect on January 1st, 1914.

Approved March 14th, 1913.

INDUSTRIAL COMMISSION ACT

(Amended Senate Bill No. 137, 103 O. L. p. 95.)

An Act creating the industrial commission of Ohio, superseding the state liability board of awards, abolishing the departments of commissioner of labor statistics, chief inspector of mines, chief inspector of workshops and factories, chief examiner of steam engineers, board of boilers rules and state board of arbitration and conciliation, merging certain powers and duties of said departments in and transferring certain powers and duties of said departments to said industrial commission of Ohio, and granting such commission certain other powers, and repealing sections 872, 873, 874, 876, 877, 878, 879, 880, 881, 883, 884, 897, 898, 900, 902, 903, 908, 979, 981, 983, 984, 986, 987, 988, 993, 1001, 1028-4, 1038, 1039, 1042, 1043, 1044, 1046, 1058, 1058-6, 1058-9, 1058-13, 1058-14, 1058-15, 1058-27, 1059, 1060, 1061, 1062, 1078 of the General Code.

Be it enacted by the General Assembly of the State of Ohio:

§ 1. (871-1) **Industrial Commission created.**—There is hereby created the industrial commission of Ohio, to be composed of three members to be appointed by the governor within thirty days after this act goes into effect, one of the members of such commission shall be appointed for the term of two years, one member for four years, and one member for six years, and thereafter each member shall be appointed for the term of six years. Not more than one of the appointees to such commission shall be a person who, on account of his previous vocation, employment or affiliations, can be classed as a representative of employers, and not more than one of such appointees shall be a person who, on account of his previous vocation, employment or affiliations, can be classed as a representative of employés; not more than two of the members of the said commission shall belong to the same political party.

Note.—The Industrial Commission of Ohio succeeds the State Liability Board of Awards, created by section 1 of 102 O. L. 524.

§ 2. (871-2) **Removal of members.**—The governor at any time shall remove any member of the industrial commission of Ohio for inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office.

§ 3. (871-3) **Qualifications of Commissioners.**—No commissioner shall hold any position of trust or profit, or engage in any occupation or business; interfering or inconsistent with his duties as such commissioner, and no commissioner shall serve on any committee of any political party.

Note.—See section 2 of 102 O. L. 524, for a similar provision.

§ 4. (871-4) **Salary—Oath—Bond.**—Each of said commissioners shall receive an annual salary of five thousand dollars, payable in the same manner as the salaries of other state officers are paid. Before entering upon the duties of his office, each commissioner shall take and subscribe the constitutional oath of office and shall swear or affirm that he holds no position under any committee of a political party, which oath or affirmation shall be filed in the office of the governor. Each member of the commission shall give a bond in the sum of ten thousand dollars, which bond shall be approved by the governor and filed with the treasurer of state. All employés or deputies of

the commission receiving or disbursing funds of the state shall give bond to the state in amounts and with surety to be approved by the commission.

Note.—See section 3 of 102 O. L. 524, for similar provisions.

§ 5. (871-5) **Organization—Vacancies.**—Within thirty days after this act goes into effect, such commission shall meet at the seat of government and organize by choosing one of its members as chairman; a majority of such commission shall constitute a quorum to transact business. No vacancy shall impair the rights of the remaining commissioners to exercise all the powers of the commission; and in case a vacancy occur, the remaining members of the commission shall exercise all of the powers and authorities of the commission until such vacancy is filled.

Note.—See section 5 of 102 O. L. 524, for similar provisions.

§ 6. (871-6) **Office.**—The commission shall keep and maintain its office in the city of Columbus, Ohio, and shall provide suitable room or rooms, necessary office furniture, supplies, books, periodicals, maps and appliances as they deem necessary, the expense thereof to be audited and paid in the same manner as other state expenses. The commission may hold sessions in any place within the state of Ohio.

Note.—See section 2 of 103 O. L. 72, for similar provisions.

§ 7. (871-7) **Traveling expenses.**—The commissioners, employes and deputies of the commission shall be entitled to receive from the state their necessary and actual expenses while traveling on business of the commission, either within or without the state of Ohio. Such expenses shall be presented in an account verified by the person who incurred the expense, approved by the chairman of the commission, and shall be audited and paid as other similar expenses are audited and paid.

Note.—See section 3 of 103 O. L. 72, for similar provisions.

§ 8. (871-8) **Seal of Commission.**—The commission shall have an official seal, for the authentication of its orders and proceedings, upon which seal shall be engraved the words, "The industrial commission of Ohio," and such other design as the commission may prescribe; and the courts in this state shall take judicial notice of the seal of the said commission, and in all cases copies of orders, proceedings or records in the office of the industrial commission of Ohio, certified by the secretary of the said commission under its seal, shall be equal to the original as evidence.

Note.—See section 2 of 103 O. L. 72, for similar provisions.

§ 9. (871-9) **Sessions—Record of proceedings.**—The commission shall be in continuous session and open for the transaction of business during all business hours of each and every day, excepting Sundays and legal holidays. The sessions shall be open to the public and the sessions of the commission shall stand and be adjourned without further notice thereof on its record. All of the proceedings of the commission shall be shown on its record, which shall be a public record, and all voting shall be had by calling each member's name by the secretary, and each member's vote shall be recorded on the proceedings as cast.

Note.—See section 4 of 102 O. L. 524, for similar provisions.

§ 10. (871-10) **Rules of procedure.**—Subject to the provisions of this act, the commission may adopt its own rules of procedure and may change the same from time to time in its discretion.

Note.—See section 8 of 102 O. L. 524, for similar provision.

§ 11. (871-11) Certain departments abolished.—On and after the first day of September, 1913, the following departments of the state of Ohio, to-wit: Commissioner of labor statistics, chief inspector of mines, chief inspector of workshops and factories, chief examiner of steam engineers, board of boiler rules, and the state board of arbitration and conciliation, shall have no further legal existence, except that the heads of the said departments, and said boards, shall within ten days after the said date submit to the governor their reports of their respective departments for the portion of the year 1913 during which they were in existence, and on and after the first day of September, 1913, the industrial commission of Ohio shall have all the powers and enter upon the performance of all the duties conferred by law upon the said departments.

Note.—Since September 1, 1913, the duties theretofore performed by the several state departments enumerated in the foregoing section have been performed by the Industrial Commission of Ohio through appropriate sub-departments. See section 22 of this act for further powers and duties of the Industrial Commission of Ohio.

§ 12. (871-12) Commission succeeds Board of Awards.—The industrial commission shall supersede and perform all of the duties of the state liability board of awards, provided in and by the act of the general assembly of the state of Ohio passed the thirty-first day of May, 1911 (102 O. L. 524) entitled, "An act to create a state insurance fund for the benefit of injured and the dependents of killed employes and to provide for the administration of such fund by a state liability board of awards," and all amendments to said act, and by the act of the general assembly passed February twenty-sixth, 1913, approved March 14, 1913, and filed in the office of the secretary of state March 17, 1913, entitled "An act to further define the powers, duties and jurisdiction of the state liability board of awards with reference to the collection, maintenance and disbursement of the state insurance fund for the benefit of injured, and the dependents of killed employes and requiring contribution thereto by employers, and to repeal sections 1465-42, 1465-43, 1465-45, 1465-46, 1465-53, 1465-54, 1465-55, 1465-56, 1465-57, 1465-58, 1465-59, 1465-60, 1465-61, 1465-62, 1465-63, 1465-64, 1465-65, 1465-66, 1465-67, 1465-68, 1465-69, 1465-70, 1465-71, 1465-72, 1465-73, 1465-74, 1465-75, 1465-76, 1465-77, 1465-78, 1465-79 of the General Code," on and after the first day of September, 1913; and said commission on and after the first day of September, 1913, as successor of the said liability board of awards, shall be vested with and assume and exercise all powers and duties cast by law upon said liability board of awards, and on the first day of September, 1913, the term of office of the members constituting the said state liability board of awards of Ohio shall cease and terminate, together with all rights, privileges and emoluments connected therewith. [103 O. L. 656, effective August 9, 1913.]

Note.—Under the provisions of the foregoing section the State Liability Board of Awards, created under section 1 of 102 O. L. 524, ceased to exist on September 1, 1913.

§ 13. (871-13) Definitions.—The following terms as used in this act shall be construed as follows:

(1) The phrase "place of employment," shall mean and include every place, whether indoors or out, or under ground, and the premises appurtenant thereto where either temporarily or permanently any industry, trade or business, is carried on, or where any process or operation, directly or indirectly related to any industry, trade or business, is carried on, and where any person is directly or indirectly, employed by another for direct or indirect gain or

profit but shall not include any place where persons are employed in private domestic service or agricultural pursuits which do not involve the use of mechanical power.

(2) The term "employment," shall mean and include any trade, occupation, or process of manufacture or any method of carrying on such trade, occupation, or process of manufacture in which any person may be engaged, except in such private domestic service or agricultural pursuits as do not involve the use of mechanical power.

(3) The term "employer," shall mean and include every person, firm, corporation, agent, manager, representative, or other person having control or custody of any employment, place of employment or of any employé.

(4) The term "employé," shall mean and include every person who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go, or work, or be at any time in any place of employment.

(5) The term "frequenter," shall mean and include every person, other than an employé, who may go in or be in a place of employment under circumstances which render him other than a trespasser.

(6) The term "deputy," shall mean and include any person employed by the industrial commission, designated as such deputy by the commission who shall possess special, technical, scientific, managerial, professional or personal abilities or qualities in matters within the jurisdiction of the industrial commission, and who may be engaged in the performance of duties under the direction of the commission, calling for the exercise of such abilities or qualities.

(7) The term "order," shall mean and include any decision, rule, regulation, direction, requirement, or standard of the commission, or any other determination arrived at or decision made by such commission.

(8) The term "general order," shall mean and include such order as applies generally throughout the state to all persons, employments, or places of employment, or all persons, employments or places of employment of a class under the jurisdiction of the commission. All other orders of the commission shall be considered special orders.

(9) The term "local order," shall mean and include any ordinance, order, rule, or determination of any city or village council, or any trustees, or board or officers of any city or village upon any matter over which the industrial commission has jurisdiction.

(10) The term "welfare," shall mean and include comfort, decency and moral well-being.

(11) The terms "safe," and "safety," as applied to any employment or a place of employment shall mean such freedom from danger to the life, health, safety or welfare of employes or frequenters as the nature of the employment will reasonably permit, including requirements as to the hours of labor with relation to the health and welfare of employes.

§ 14. (871-14) Assistants to Commission.—The commission is authorized and empowered to employ, promote and remove a secretary, or secretaries, deputies, clerks, stenographers, and other assistants, as needed; to fix their compensation, and to assign to them their duties. Such employments and compensation to be first approved by the governor.

Note.—See section 3 of 103 O. L. 72, for similar provisions.

§ 15. (871-15) Safety requirements.—Every employer shall furnish employment which shall be safe for the employes therein, and shall furnish a place of employment which shall be safe for the employes therein, and for frequenters thereof, and shall furnish and use safety devices and safeguards, and shall adopt and use methods and processes, follow and obey orders and prescribe hours of labor reasonably adequate to render such employment and places of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety and welfare of such employes and frequenters.

§ 16. (871-16) Same.—No employer shall require, permit or suffer any employe to go or be in any employment or place of employment which is not safe, and no such employer shall fail to furnish, provide and use safety devices and safeguards, or fail to obey and follow orders or to adopt and use methods and processes reasonably adequate to render such employment and place of employment safe, and no employer shall fail or neglect to do every other thing reasonably necessary to protect the life, health, safety and welfare of such employes or frequenters; and no such employer or other person shall hereafter construct or occupy or maintain any place of employment that is not safe.

§ 17. (871-17) Removal of safety devices.—No employes shall remove, displace, damage, destroy or carry off any safety device or safeguard furnished or provided for use in any employment or place of employment, nor interfere in any way with the use thereof by any other person, nor shall any such employe interfere with the use of any method or process adopted for the protection of any employe in such employment or place of employment, or frequenter of such place of employment, nor fail or neglect to follow and obey orders and to do every other thing reasonably necessary to protect the life, health, safety and welfare of such employes and frequenters.

§ 18. (871-18) Information to be furnished.—Every employer shall furnish to the commission all information required by it to carry into effect the provisions of this act and shall make specific answers to all questions submitted by the commission relative thereto.

Note.—See section 4 of 103 O. L. 72, for similar provisions.

§ 19. (871-19) Filling of blanks.—Any employer receiving from the commission any blanks calling for information required by it to carry into effect the provisions of this act, with directions to fill out the same, shall cause the same to be properly filled out so as to answer fully and correctly each question therein propounded, and in case he is unable to answer any question, he shall give a good and sufficient reason for such failure; and said answers shall be verified under oath by the employer, or by the president, secretary, or other managing officer of the corporation, if the employer is a corporation, and returned to the commission at its office within the period fixed by the commission.

Note.—See section 4 of 103 O. L. 72, for similar provisions.

§ 20. (871-20) Access to places of employment.—Any commissioner or deputy of the commission may enter any place of employment for the purpose of collecting facts and statistics, examining the provisions made for the health, safety, and welfare of the employes therein, and bring to the attention of every employer any law, or any order of the commission, and any failure on the part of such employer to comply therewith. No employer shall

refuse to admit any commissioner or deputy of the commission to his place of employment.

§ 21. (871-21) Power and jurisdiction.—The industrial commission of Ohio is vested with the power and jurisdiction on and after the first day of September, 1913, to have such supervision of every employment and place of employment and of every other building and establishment in this state as may be necessary adequately to enforce and administer all laws and all lawful orders requiring such employment and place of employment or building or establishment, to be safe, and requiring the protection of the life, health, safety and welfare of every employé in such employment or place of employment, and every frequenter of such place of employment, including the power to regulate the hours of labor of employés in such employments and places of employment, with regard to the health and welfare of such employés to such extent as the nature of the employment will reasonably permit, not inconsistent with law.

§ 22. (871-22) Same.—It shall also be the duty of the industrial commission, and it shall have full power, jurisdiction and authority:

(1) To appoint advisers, who shall without compensation, assist the industrial commission in the execution of its duties; to retain and assign to their duties any or all officers, subordinates and clerks of the commissioner of labor statistics, the chief inspector of mines, the chief inspector of workshops and factories, the chief examiner of steam engineers, the board of boiler rules, chief inspector of steam boilers, the state board of arbitration and conciliation, and the state liability board of awards.

(2) On and after the first day of September, 1913, to administer and enforce the general laws of this state relating to mines, manufacturing, mechanical, electrical, art and laundering establishments, child labor, employment of minors, explosives, printing, telegraph and telephone offices, railroad depots, hotels, memorial buildings, tenement and apartment houses, school houses, colleges, opera houses, halls, theaters, churches, infirmaries, children's homes, hospitals, medical institutes, asylums, and other buildings used for the assemblage or betterment of people in the state, bakeries, employment offices, stores, intelligence offices and bureaus, manufacturers of cigars, sweat shops, fire escapes, and means of egress from buildings, scaffolds, hoists, ladders and other matters relating to the erection, repair, alteration or painting of buildings and structures, employment of females, hours of labor, licensed occupations and school attendance, and all other laws protecting the life, health, safety and welfare of employés in employments and places of employment, frequenters of places of employment or relating to the health and safety of persons occupying or assembled in the structures named above, on and after the first day of September, 1913.

(3) To investigate, ascertain, and on and after the first day of September, 1913, to declare and prescribe what hours of labor, safety devices, safeguards, or other means or methods of protection are best adapted to render the employés of every employment and place of employment and frequenters of every place of employment, safe, and to protect their welfare as required by law or lawful orders, and to establish and maintain museums of safety and hygiene in which shall be exhibited safety devices, safeguards and other means and methods for the protection of life, health, safety and welfare of employés.

(4) To ascertain and on and after the first day of September, 1913, to fix such reasonable standards and to prescribe, modify and enforce such reasonable orders for the adoption of safety devices, safeguards and other means or methods of protection to be as nearly uniform as possible as may be necessary to carry out all laws and lawful orders relative to the protection of the life, health, safety and welfare of employes in employments and places of employment or frequenters of places of employment.

(5) To ascertain, and on and after the first day of September, 1913, fix and order such reasonable standards for the construction, repair and maintenance of places of employment as shall render them safe.

(6) To investigate, ascertain and determine such reasonable classifications of persons, employments and places of employment as shall be necessary to carry out the purposes of this act.

(7) To adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities, and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings; such rules and regulations shall not be effective until ten days after their publication. A copy of such rules and regulations shall be delivered to every citizen making application therefor, and a copy delivered with every notice of hearing.

(8) To do all in its power to promote the voluntary arbitration, mediation and conciliation of disputes between employers and employes and to avoid the necessity of resorting to lockouts, boycotts, blacklists, discriminations and legal proceedings in matters of employment. In pursuance of this duty it may appoint temporary boards of arbitration, provide the necessary expenses of such boards, order reasonable compensation not exceeding five dollars per day for each member engaged in such arbitration, prescribe rules of procedure for such arbitration boards, conduct investigations and hearings, publish reports and advertisements, and may do all other things convenient and necessary to accomplish the purposes directed in this act. The commission shall designate a deputy to be known as chief mediator and may detail other deputies from time to time to act as assistants for the purpose of executing these provisions. The deputies may act on temporary boards without extra compensation.

(9) To establish and conduct free employment agencies, and on and after the first day of September, 1913, to license and supervise the work of private employment offices to do all in its power to bring together employers seeking employes and working people seeking employment, to make known the opportunities for self employment in this state, to aid in inducing minors to undertake promising skilled employments, and to encourage wage earners to insure themselves against distress from unemployment. It shall investigate the extent and causes of unemployment in the state of Ohio and the remedies therefor in this and other states and countries, and it shall devise and adopt the most efficient means in its power to avoid unemployment, to provide employment and to prevent distress from involuntary idleness.

(10) To collect, collate and publish all statistical and other information relating to employes, employers, employments and places of employment and such other statistics as may be necessary, and to make public reports in its judgment necessary.

(11) On and after September 1, 1913, to examine and license persons who desire to act as steam engineers, and persons who desire to operate steam

boilers and persons who desire to act as inspectors of steam boilers; to provide for the scope, conduct, and time of such examinations, to provide for, regulate and enforce the renewal and revocation of such licenses, to inspect and examine steam boilers and to make, publish and enforce rules and regulations and orders for the construction, installation, inspection and operation of steam boilers and all appliances connected with steam boilers and to do and require and enforce all things necessary to make such examination, inspection and requirement efficient.

(12) To rent and furnish offices as needed in cities in this state for the conduct of its affairs.

Note.—See section 2 of 103 O. L. 72 for provisions similar to paragraph 12 of the foregoing section. The powers and duties of the Industrial Commission of Ohio defined in this section embodies all of the powers and duties formerly exercised by the several state departments mentioned in section 11 of this act.

§ 23. (871-23) Investigation of unsafe places of employment.—(1) Upon petition after the first day of September, 1913, by any person that any employment or place of employment is not safe or is injurious to the welfare of any employé or frequenter, the commission shall proceed with or without notice to make such investigation as may be necessary to determine the matter complained of.

(2) After such hearing as may be necessary, the commission may enter such order relative thereto as may be necessary to render such employment or place of employment safe and not injurious to the welfare of the employés therein or frequenters thereof.

(3) Whenever the commission shall learn that any employment or place of employment is not safe or is injurious to the welfare of any employé or frequenter, it may of its own motion summarily investigate the same, with or without notice and issue such order as may be necessary thereto.

§ 24. (871-24) Transfer of duties and powers.—All duties, liabilities, authority, powers and privileges conferred and imposed by law upon the commissioner of labor statistics, special agents for the commissioners of labor statistics, chief inspector of mines, district inspectors of mines, chief inspector of workshops and factories, first assistant chief inspector of workshops and factories, second assistant chief inspector of workshops and factories, district inspectors of workshops and factories, chief examiner of steam engineers, assistant chief examiner of steam engineers, district examiners of steam engineers, the board of boiler rules, head of the department of the board of boiler rules and chief inspector of steam boilers, assistant chief inspector of steam boilers, general inspectors of steam boilers, special inspector of steam boilers, state board of arbitration and conciliation, are hereby imposed upon the industrial commission of Ohio and its deputies on and after the first day of September, 1913.

All laws relating to the commissioner of labor statistics, special agents of the commissioner of labor statistics, chief inspector of mines, district inspectors of mines, chief inspector of workshops and factories, first assistant chief inspector of workshops and factories, second assistant chief inspector of workshops and factories, district inspectors of workshops and factories, chief examiner of steam engineers, assistant chief examiner of steam engineers, district examiners of steam engineers, the board of boiler rules, head of the department of the board of boiler rules and chief inspector of steam boilers, assistant chief inspector of steam boilers, general inspectors of steam boilers,

special inspectors of steam boilers, state board of arbitration and conciliation, on and after the first day of September, 1913, shall apply to, relate and refer to the industrial commission of Ohio, and its deputies. Qualifications prescribed by law for said officers and their assistants and employés shall be held to apply, wherever applicable, to the qualifications of the deputies of the commission assigned to the performance of the duties now cast upon such officers, assistants and employés.

Note.—See sections 11 and 22 of this act; also section 12 of this act as amended, 103 O. L. 656.

§ 25. (871-25) **Orders prima facie lawful.**—All orders of the industrial commission of Ohio in conformity with law shall be in force and shall be prima facie reasonable and lawful; and all such orders shall be valid and in force and prima facie reasonable and lawful until they are found otherwise in an action brought for that purpose pursuant to the provisions of section 41 of this act, or until altered or revoked by the commission.

§ 26. (871-26) **When orders of Commission effective.**—(1) All general orders shall take effect within thirty days after their publication. Special orders shall take effect as therein directed.

(2) The commission shall, upon application of any employer grant such time as may be reasonably necessary for compliance with any order.

(3) Any person may petition the commission for an extension of time which the commission shall grant if it finds such extension of time necessary.

§ 27. (871-27) **Hearing on reasonableness of order.**—(1) Any employer or other person interested either because of ownership in or occupation of any property affected by any such order, or otherwise, may petition for a hearing on the reasonableness and lawfulness of any order of the commission in the manner provided in this act.

(2) Such petition for hearing shall be by verified petition filed with the commission, setting out specifically and in full detail the order upon which a hearing is desired and every reason why such order is unreasonable or unlawful, and every issue to be considered by the commission on the hearing. The petitioner shall be deemed to have finally waived all objection to any irregularities and illegalities in the order upon which a hearing is sought other than those set forth in the petition. All hearings of the commission shall be open to the public.

(3) Upon receipt of such petition, if the issues raised in such petition have theretofore been adequately considered, the commission shall determine the same by confirming, without hearing, its previous determination, or if such hearing is necessary to determine the issues raised, the commission shall order a hearing thereon and consider and determine the matter or matters in question at such time as shall be prescribed. Notice of the time and place of such hearing shall be given to the petitioner and to such other persons as the commission may find directly interested in such decision.

(4) Upon such investigation, if it shall be found that the order complained of is unlawful or unreasonable, the commission shall substitute therefor such other order as shall be lawful and reasonable.

(5) Whenever at the time of final determination upon such hearing it shall be found that further time is reasonably necessary for compliance with the order of the commission, the commission shall grant such time as may be reasonably necessary for such compliance.

§ 28. (871-28) Concurrent jurisdiction—Hearing on local orders.—

(1) Nothing contained in this act shall be construed to deprive the council of any city or village or any board of trustees or officer of any city or village of any power or jurisdiction over or relative to any place of employment, provided that whenever the industrial commission of Ohio shall, by an order fix a standard of safety or any hygienic condition for employments or places of employment, such order shall, upon the filing by the commission of a copy thereof with the clerk of the village or city to which it may apply, be held to amend or modify any similar conflicting local order in any particular matters governed by said order. Thereafter no local officer will make or enforce any order contrary thereto.

(2) Any person affected by any local order in conflict with an order of the commission may, in the manner provided in this act, petition the industrial commission for a hearing on the ground that such local order is unreasonable and in conflict with the order of the commission. The petition for such hearing shall conform to the requirements set forth for a petition in section 27 of this act.

(3) Upon receipt of such petition the commission shall order a hearing thereon, to consider and determine the issues raised by such appeal, such hearing to be held in the village or city where the local order appealed from was made. Notice of the time and place of such hearing shall be given to the petitioner and such other persons as the commission may find directly interested in such decision, including the clerk of the village, or the mayor of the village or city from which such appeal came. If upon such investigation it shall be found that the local order appealed from is unreasonable and in conflict with the order of the commission, the commission may modify its order and shall substitute for the local order appealed from such order as shall be reasonable and legal in the premises, and thereafter the said local order shall, in such particulars, be void and of no effect.

§ 29. (871-29) Action to set aside order.—No action, proceeding or suit to set aside, vacate or amend any order of the commission, or to enjoin the enforcement thereof, shall be brought unless the plaintiff shall have applied to the commission for a hearing thereon at the time and as provided in section 27 of this act, and in the petition therefor shall have raised every issue raised in such action.

Every order of the commission shall, in every prosecution for violation thereof, be conclusively presumed to be just, reasonable and lawful, unless prior to the institution of the prosecution for such violation an action shall have been brought to vacate and set aside such order, as provided in section 41 of this act.

§ 30. (871-30) Powers of commissioners—Enforcement of orders.—Each of the commissioners and the secretary of the commission for the purposes mentioned in this act shall have power to administer oaths, certify to official acts, issue subpoenas, compel attendance of witnesses and the production of papers, books, accounts, documents and testimony. In case of the failure of any person to comply with any order of the commission or any subpoena lawfully issued, or upon the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the common pleas judge of any county in this state on the application of a commissioner, to compel obedience by attachment proceedings for contempt,

as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

§ 31. (871-31) **Witness fees.**—Each witness who shall appear before the commission by its order shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in the court of common pleas, which shall be audited and paid by the state out of the state treasury in the same manner as other expenses are audited and paid, upon the presentation of properly verified vouchers approved by the chairman of the commission. But no witness subpoenaed at the instance of the parties other than the commission shall be entitled to compensation from the state for attendance or travel, unless the commission shall certify that his testimony was material to the matter investigated.

§ 32. (871-32) **Depositions.**—The commission or any party may in any investigation cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like deposition in civil actions.

§ 33. (871-33) **Record of proceedings.**—A full and complete record shall be kept of all proceedings had before the commission on any investigation, and all testimony shall be taken down by a stenographer appointed by the commission.

§ 34. (871-34) **Publication of rules and orders.**—Publication of rules and orders of the commission shall be made by the commission in pamphlet form to be furnished on demand at the office of the commission. The expenses of publication shall be audited and paid as are other expenses of the commission.

Note.—See section 57 of 103 O. L. 72, for similar provisions.

§ 35. (871-35) **Deputy commissioner—Powers.**—(1) For the purpose of making any investigation with regard to any employment or place of employment, the commission shall have power to appoint, by an order in writing, any member of the commission, any deputy, who is a citizen of the state, or any other competent person who is a resident of the state as an agent whose duty shall be prescribed in such order.

(2) In the discharge of his duties such agent shall have every power whatsoever of an inquisitorial nature granted in this act to the commission, and the same powers as a master commissioner appointed by a court of common pleas with regard to taking testimony.

(3) The commission may conduct any number of such investigations contemporaneously through different agents, and may delegate to such agents the taking of all testimony bearing upon any investigation or hearing. The decision of the commission shall be based upon its examination of all testimony and records. The recommendations made by such agents shall be advisory only and shall not preclude the taking of further testimony if the commission so orders, nor further investigation.

§ 36. (871-36) **Special prosecutor in compensation cases—Duty of attorney general.**—The commission shall have the authority to direct any deputy who is a citizen to act as special prosecutor in any action, proceeding, investigation, hearing or trial relating to matters within its jurisdiction.

Upon the request of the commission, the attorney general or the prosecuting attorney of the county in which any investigation, hearing or trial had under the provisions of this act is pending, shall aid therein and prosecute

under the supervision of the commission, all necessary actions or proceedings for the enforcement of this act and all other laws of this state relating to the protection of life, health, safety and welfare, and for the punishment of all violations thereof.

§ 37. (871-37) **Construction of requirements.**—A substantial compliance with the requirements of this act shall be sufficient to give effect to the orders of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

§ 38. (871-38) **Action to vacate order.**—Any employer or other person in interest being dissatisfied with any order of the commission may commence an action in the supreme court of Ohio, against the commission as defendant to set aside, vacate or amend any such order on the ground that the order is unreasonable or unlawful and the supreme court is hereby authorized and vested with exclusive jurisdiction to hear and determine such action. The commission shall be served with summons as in other civil cases. The answer of the commission shall be filed within ten days after service of summons upon it and with its answer it shall file a certified transcript of its record in said matter. Upon the filing of said answer said action shall be at issue and shall be advanced and assigned for trial by the court, upon the application of either party, at the earliest possible date.

§ 39. (871-39) **Modification of order after appeal.**—(1) If upon the trial of such action it shall appear that all issues arising in such action have not theretofore been presented to the commission in the petition filed as provided in section 27 of this act, or that the commission has not theretofore had ample opportunity to hear and determine any of the issues raised in said act, or has for any reason not in fact heard and determined the issues raised, the court shall, before proceeding to render judgment, unless the parties to such action stipulate to the contrary, transmit to the commission a full statement of such issue or issues not adequately considered and shall stay further proceedings in such action for fifteen days from the date of such transmission and may thereafter grant such further stay as may be necessary.

(2) Upon the receipt of such statement, the commission shall consider the issues not theretofore considered, and may alter, modify, amend, or rescind its order complained of in said action, and shall report its order thereon to said court within ten days from the receipt of the statement from the court for further hearing and consideration.

(3) The court shall thereupon order such amendment or other proceeding as may be necessary to raise the issues as changed by such modification of order as may have been made by the commission upon the hearing, if any such modification has in fact been made, and shall thereupon proceed with such action in the manner provided by law for other civil actions.

§ 40. (871-40) **Jurisdiction to vacate orders.**—No court of this state except the supreme court to the extent specified by this act, shall have jurisdiction to review, vacate, set aside, reverse, revise, correct, amend or annul any order of the industrial commission of Ohio, or to suspend or delay the execution or operation thereof or to enjoin, restrain or interfere with the commission in the performance of its official duties, provided that the writ of mandamus shall lie from the said supreme court to the commission in all proper cases.

Note.—See section 57 of 103 O. L. 524, for similar provisions.

§ 41. (871-41) **Stay or suspension of order.**—The pendency of an action to set aside, vacate or amend an order of the commission shall not of itself stay or suspend the operation of an order of the commission; but, during the pendency of said action the said supreme court in its discretion may stay or suspend, in whole or in part, the operation of the commission's order. But no order so staying or suspending an order of the commission shall be made by the said court otherwise than upon three days' notice and after hearing. In case the order is stayed or suspended the order of the court shall not become effective until a suspending bond first shall have been executed, filed with and approved by the commission, or by the said court or the clerk thereof, payable to the state of Ohio, and sufficient in amount and security to insure the prompt payment by the party petitioning to set aside, vacate or amend such order of all damages caused by the delay in the enforcement of the order of the commission.

§ 42. (871-42) **Preference of compensation claims.**—All actions and proceedings under this act, and all actions or proceedings to which the industrial commission of Ohio or this state of Ohio may be parties, and in which any question arises under this act, or under or concerning any order of the industrial commission, shall be preferred over all other civil cases, except election causes and causes involving or affecting the public utilities commission of Ohio, irrespective of position on the calendar. The same preference shall be granted upon application of the attorney of the industrial commission in any action or proceeding in which he may be allowed to intervene.

§ 43. (871-43) **Penalties.**—If any employer, employé or other person shall violate any provision of this act or shall do any act prohibited by this act or shall fail or refuse to perform any duty lawfully enjoined, within the time prescribed by the commission, for which no penalty has been specifically provided, or fail, neglect or refuse to obey any lawful order given or made by the commission, or any judgment or decree made by any court in connection with the provisions of this act, for each such violation, failure or refusal such employer or other person shall be fined not less than fifty dollars nor more than one thousand dollars for the first offense and not less than one hundred nor more than five thousand dollars for each subsequent offense.

§ 44. (871-44) **Separate offenses.**—Every day during which any person, persons or corporations, or any officer, agent or employé thereof shall fail to observe and comply with any order of the commission, or to perform any duty enjoined by this act shall constitute a separate and distinct violation of such order or said section as the case may be.

§ 45. (871-45) **Validity of sections independent.**—The sections of this act, and every part of such sections, are hereby declared to be independent sections, and parts of sections and the holding of any section or part thereof to be void or ineffective shall not affect any other section or part thereof.

Note.—See section 59 of 103 O. L. 72, for similar provisions.

§ 46. **Repeal.**—That sections 872, 873, 874, 876, 877, 878, 879, 880, 881, 883, 884, 897, 898, 900, 902, 903, 908, 979, 981, 983, 984, 986, 987, 988, 993, 1001, 1028-4, 1088, 1039, 1042, 1043, 1044, 1046, 1058, 1058-6, 1058-9, 1058-13, 1058-14, 1058-15, 1058-27, 1059, 1060, 1061, 1062, 1078, of the General Code of Ohio be, and the same are hereby repealed from and after September 1st, 1913.

Approved March 18, 1913.

OKLAHOMA

WORKMEN'S COMPENSATION LAW

Section

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WORKMEN'S COMPENSATION LAW

(Laws 1915, c. 246.)

An Act providing for compulsory compensation of injured employees in hazardous industries, placing the supervision of the Act under a Commission herein created. Fixing a schedule of awards and providing penalties for the violation of this Act.

Be it Enacted by the People of the State of Oklahoma:

ARTICLE ONE

§ 1. **Title.**—This Act shall be known as the "Workmen's Compensation Law."

§ 2. **Employments included in Act.**—Compensation provided for in this Act shall be payable for injuries sustained by employees engaged in the following hazardous employments, to-wit: Factories, cotton-gins, mills and workshops where machinery is used; printing, electrotyping, photograving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gas works, waterworks, reduction works, elevators, dredges, smelters, powder works, laundries operated by power; quarries; engineering works, logging, lumbering, street and interurban railroads not engaged in interstate commerce, buildings being constructed, repaired or demolished, farm building and farm improvements excepted; telegraph, telephone, electric light or power plants or lines; steam heating or power plants and railroads not engaged in interstate commerce. If there be or arise any hazardous occupation or work other than those herein above enumerated it shall come under this Act.

§ 3. **Definitions.**—As used in this Act:

1. **Hazardous employment.**—"Hazardous employment" shall mean manual or mechanical work or labor connected with or incident to one of the industries, plants, factories, lines, occupations or trades, mentioned in Section 2 of this Act, but shall not include any one engaged in agricultural, horticultural or retail mercantile pursuits or dairy or stock raising, or in operating any steam railroad engaged in interstate commerce.

2. **Commission.**—"Commission" means the State Industrial Commission as constituted by this Act.

3. **Employer.**—"Employer," except when otherwise expressly stated, means a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation employing workmen in hazardous employments, and shall include the State, County, City or any municipality when engaged in any hazardous work within the meaning of this Act in which workmen are employed for wages; provided, however, that so long as by State law, city charter or municipal ordinance, provision equal to or better than that given under the terms of this Act, made for such employees injured in the course of employment, such employees shall not be entitled to the benefits of this Act.

4. **Employee.**—"Employee" means any person engaged in manual or mechanical work in the employment of any person, firm or corporation carrying on a business covered by the terms of this Act.

5. Employment.—"Employment" includes employment only in a trade, business or occupation carried on by the employer for pecuniary gain.

6. Compensation.—"Compensation" means the money allowance payable to an employee as provided for in this Act.

7. Injury or personal injury.—"Injury or personal injury" means only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally and unavoidably result therefrom.

8. Wages.—"Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer.

9. Insurance carrier.—"Insurance carrier" shall include stock corporations, reciprocal or inter-insurance association, or mutual associations with which employers have insured, and employers permitted to pay compensation, directly under the provisions of subdivision (d) of Section 1 of Article 3 of this Act.

10. Factory.—"Factory" means any undertaking in which the business of working at commodities is carried on with power-driven machinery, either in manufacture, repair, cleaning or assorting, and shall include the premises, yard and plant of the concern, but shall not include any such plants or machinery used on farms.

11. Workshop.—"Workshop" means any premises, yard, plant, room or place wherein power-driven machinery is employed and manual or mechanical labor is exercised by way of trade for gain or otherwise or incidental to the process of making, altering, repairing, printing, or ornamenting, cleaning, finishing, or adapting for sale or otherwise, any article, or part of article, machine or thing over which premises, room or place the employer of the person working therein has the right of access or control.

12. Mine.—"Mine" means any mine where coal, ore, mineral, gypsum or rock is dug or mined under the ground.

13. Quarry.—"Quarry" means an opening or cut from which coal is mined, or clay, ore, mineral gypsum, gravel, sand or rock is cut or taken for manufacturing, building, or construction purposes.

14. Construction work.—"Construction work" means improvements or alterations or repair of building, structures, streets, highways, sewers, street railways, railroads, logging roads, interurban railroads, electric, steam or water plants, telegraph and telephone plants and lines, electric lines or power lines, and includes any other work for the constructions, altering or repairing for which machinery driven by mechanical power is used.

15. Unclassified labor—Hazardous—Commission to classify.—"Where several classes or kinds of work is performed the Commission shall classify such employment, and the provisions of this Act shall apply only to such employees as are engaged in manual or mechanical labor of a hazardous nature."

ARTICLE TWO

§ 1. Compensation for disability—Restrictions.—Every employer subject to the provisions of this Act shall pay, or provide as required by this Act, compensation according to the schedules of this article for the disability of his employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of his employment, without

regard to fault as a cause of such injury, except where the injury is occasioned by the willful intention of the injured employee to bring about injury of himself or of another, or where the injury results directly from the willful failure of the injured employee to use a guard or protection against accident furnished for his use pursuant to any statute or by order of the State Labor Commissioner, or results directly from the intoxication of the injured employee while on duty; provided that the provisions of this Act shall not apply to any employer unless he shall employ more than two workmen.

§ 2. Failure to pay compensation—Prosecution—Liability.—The liability prescribed in the last preceding section shall be exclusive, except that if an employer has failed to secure the payment of compensation for his injured employees, as provided in this Act, then an action may be maintained in the courts for damages on account of such injury for the benefit of such injured employee, and in such an action the defendant may not plead or prove as defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee, and this claim shall be prosecuted for the injured employee by the Commissioner without expense to such employee, and the amount recovered in such action shall be paid by the Commission to such injured party, provided that this section shall not be construed to relieve the employer from any other penalty provided for in this Act for failure to secure the payment of compensation provided for in this Act.

§ 3. Benefits for first fourteen days of disability.—No compensation shall be allowed for the first fourteen days of disability, except the benefits provided for in Section 4 of this article.

§ 4. Medical treatment and care—Request to employer.—The employer shall promptly provide for an injured employee such medical, surgical or other attendance or treatment, nurse and hospital service, medicine, crutches and apparatus as may be necessary, during fifteen days after the injury. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. The employee shall not be entitled to recover any amount expended by him for such treatment or services unless he shall have requested the employer to furnish the same and the employer shall have refused or neglected to do so. All fees and other charges for such treatment and services shall be subject to regulation by the Commission as provided in Section 14 of this article, and shall be limited to such charges as prevail in the same community for similar treatment of injured person of a like standard of living; provided, the employer shall not be liable to make any of the payments provided for in this section, in case of a contest of liability where the Commission shall decide that the injury does not come within the terms of this Act.

§ 5. Basis of compensation—Weekly wages—Time of service.—Except as otherwise provided in this Act, the average weekly wages of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation and shall be determined as follows:

1. If the injured employee shall have worked in the employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the

average daily wage or salary which he shall have earned in such employment during the days when so employed.

2. If the injured employee shall not have worked in such employment during substantially the whole of such year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or in a similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed.

3. If either of the foregoing methods of arriving at the annual average earnings of an injured employee cannot reasonably and fairly be applied, such annual earnings shall be such sum as, having regard to the previous earnings of the injured employee and of other employees of the same or most similar class working in the same or most similar employment in the same or neighboring locality, shall reasonably represent the annual earning capacity of the injured employee in the employment in which he was working at the time of the accident.

4. The average weekly wages of an employee shall be one fifty-second part of his average annual earnings.

5. If it be established that the injured employee was a minor when injured, and that under normal conditions his wages would be expected to increase, the fact may be considered in arriving at his average weekly wages.

§ 6. Schedule of compensation—Extent of disability.—The following schedule of compensation is hereby established:

1. Permanent Total Disability. In case of total disability adjudged to be permanent, 50 per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability not exceeding five hundred weeks; loss of both hands, or both feet, or both legs, or both eyes, or any two thereof, shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

2. Temporary Total Disability. In case of temporary total disability 50 per centum of the average weekly wages shall be paid to the employee during the continuance thereof, but not in excess of three hundred weeks, except as otherwise provided in this Act.

3. Permanent Partial Disability. In case of disability partial in character but permanent in quality, the compensation shall be 50 per centum of the average weekly wages, and shall be paid to the employee for the period named in the schedule as follows:

Thumb. For the loss of a thumb, sixty weeks.

First Finger. For the loss of a first finger, commonly called index finger, thirty-five weeks.

Second Finger. For the loss of a second finger, thirty weeks.

Third Finger. For the loss of a third finger, twenty weeks.

Fourth Finger. For the loss of a fourth finger, commonly called the little finger, fifteen weeks.

Phalange of Thumb or Finger. The loss of the first phalange of the thumb or finger shall be considered to be equal to the loss of one-half of such thumb or finger, and compensation shall be of one-half of the amount above specified. The loss of more than one phalange shall be considered as the

loss of the entire thumb or finger; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

Great Toe. For the loss of a great toe, thirty weeks.

Other Toes. For the loss of one of the toes other than the great toe, ten weeks.

Phalange of Toe. The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of the amount specified. The loss of more than one phalange shall be considered as the loss of the entire toe.

Hand. The loss of a hand, two hundred weeks.

Arm. For the loss of an arm, two hundred fifty weeks.

Foot. For the loss of a foot, one hundred fifty weeks.

Eye. For the loss of an eye, one hundred weeks.

Leg. For the loss of a leg, one hundred seventy-five weeks.

Loss of Use. Permanent loss of the use of a hand, arm, foot, leg or eye shall be considered as the equivalent of the loss of such hand, arm, foot, leg or eye.

Amputations. Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand. Amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm. Amputation at or above the knee shall be considered as the loss of a leg.

The compensation for the foregoing specific injuries shall be in lieu of all other compensation, except the benefits provided in Section 4 of Article 2 of this Act.

Other cases. In all other cases in this class of disability the compensation shall be 50 per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability; not to exceed three hundred weeks, but subject to reconsideration of the degree of such impairment by the Commission on its own motion or upon the application of any party in interest.

4. Temporary Partial Disability. In case of temporary partial disability, except the particular cases mentioned in subdivision three of this section, an injured employee shall receive 50 per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, if less than before the injury during the continuance of such partial disability, but not in excess of three hundred weeks, except as otherwise provided in this Act.

5. Limitation. The compensation payments under the provisions of this Act shall not exceed the sum of ten (\$10.00) dollars per week or be less than \$6.00 per week; provided, however, that if the employee's wages at the time of the injury are less than six (\$6.00) dollars per week he shall receive his full weekly wages; provided, further, that the compensation received as provided under subdivision 4 of this section shall not, when added to the wages received by such employee after such injury, amount to a greater sum than his average weekly wages received prior to said injury.

6. Previous Disability. The fact that an employee has suffered previous

disability, or received compensation therefor, shall not preclude him from compensation for a later injury, but in determining compensation for the latter injury his average weekly wages shall be such sum as will reasonably represent his earning capacity at the time of the later injury.

§ 7. Compensation to non-resident aliens—Future installments.—Compensation under this Act to aliens not residents (or about to become non-residents) of the United States shall be the same in amount as provided for residents, except that the Commission may, at its option, or, upon the application of the insurance carrier, shall, commute all future instalments of compensation to be paid to such aliens by paying or causing to be paid to them one-half of the computed amount of such future instalments of compensation as determined by the Commission.

§ 8. Notice—Requirements.—Notice of an injury, for which compensation is payable under this Act shall be given to the Commission and to the employer within thirty days after injury. Such notice may be given by any person claiming to be entitled to compensation, or by some one in his behalf. The notice shall be in writing, and contain the name and address of the employee, and state in ordinary language the time, place, nature and cause of the injury, and be signed by him or by a person on his behalf. It shall be given to the Commission by sending it by mail, registered letter, addressed to the Commission at its office. It shall be given to the employer by delivering it to him or sending it by mail, by registered letter, addressed to the employer at his or its last-known place of residence; provided, that if the employer be a partnership, then such notice may be given to anyone of the partners, and if the employer be a corporation, then such notice may be given to any agent or officer thereof upon whom legal process may be served, or any agent in charge of the business in the place where the injury occurred. The failure to give such notice, unless excused by the Commission, either on the ground that notice for some sufficient reason could not have been given, or on the ground that the insurance carrier or employer, as the case may be, has not been prejudiced thereby, shall be a bar to any claim under this Act.

§ 9. Medical examinations.—An employee injured claiming or entitled to compensation under this Act, shall, if requested by the Commission, submit himself for medical examination at a time, and from time to time, at place reasonably convenient for the employee, and as may be provided by the rules of the Commission. If the employee or the insurance carrier request he shall be entitled to have a physician or physicians of his own selection to be paid by him present to participate in such examination. If an employee refuses to submit himself to examination, his right to prosecute any proceeding under this Act shall be suspended, and no compensation shall be payable for the period of such refusal.

§ 10. Filing of claims—Agreements—Hearing.—At any time after the expiration of the first fourteen days of disability on the part of the injured employee, a claim for compensation may be presented to the Commission. If the employer and the injured employee shall reach an agreement as to the facts with relation to an injury for which compensation is claimed under this Act, a memorandum of such agreement, in form as prescribed by the Commission and signed by both employer and the employee, may be immediately filed by the employer with the Commission, and, if approved by the

Commission, shall, in the absence of fraud, be deemed binding upon the parties thereto. Such agreement shall be approved by said Commission only when the terms conform to the provisions of this Act. The Commission shall have full power and authority to determine all question in relation to the payment of claims for compensation under the provisions of this Act. The Commission shall make, or cause to be made, such investigation as it deems necessary, and upon application of either party, shall order a hearing, and within thirty days after a claim for compensation is submitted under this section, or such hearing closed, shall make or deny an award, determining such claim for compensation, and file the same in the office of the Commission, together with a statement of its conclusions of fact and rulings of law. The Commission may, before making an award, require the claimant to appear before an arbitration committee, appointed by it and consisting of one representative of employees, one representative of employers, and either a member of the Commission or a person specially deputized by the Commission to act as chairman, before which the evidence in regard to the claim shall be adduced and by which it shall be considered and reported upon. Immediately after such filing the Commission shall send to the parties a copy of the decision. Upon a hearing pursuant to this section either party may present evidence and be represented by counsel. The decision of the Commission shall be final as to all questions of fact, and except as provided in Section 13 of this article as to all questions of law.

§ 11. Certain presumptions in absence of evidence.—If any proceeding, for the enforcement of a claim for compensation under this Act, it shall be presumed in the absence of substantial evidence to the contrary:

1. That the claim comes within the provisions of this Act.
2. That sufficient notice thereof was given.
3. That the injury was not occasioned by the willful intention of the injured employee to bring about the injury to himself or of another.
4. That the injury did not result solely from the intoxication of the injured employee while on duty.
5. That the injury did not result directly from the willful failure of the injured employee to use a guard or protection against accident furnished for his use pursuant to any statute or by order of the Labor Commissioner.

§ 12. Review of awards.—Upon its own motion or upon the application of any party in interest, on the ground of a change in conditions, the Commission may, at any time review any award, and, on such review, may make an award ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in this Act, and shall state its conclusions of fact and rulings of law, and shall immediately send to the parties a copy of the award. No such review shall affect such award as regards any money already paid.

§ 13. Appeal to Supreme Court—Requirements.—The award or decision of the Commission shall be final and conclusive upon all questions within its jurisdiction between the parties, unless within thirty days after a copy of such award or decision has been sent by said Commission to the parties affected, an action is commenced in the Supreme Court of the State to review such award or decision. Said Supreme Court shall have original jurisdiction of such action, and is authorized to prescribe rules for the commencement and trial of the same. Such action shall be commenced by filing

with the clerk of the Supreme Court a certified copy of the award or decision of the Commission attached to the petition by the complainant, wherein the complainant or petitioner shall make his assignments or specifications as to wherein said award or decision is erroneous and illegal. Said proceeding shall be heard in a summary manner and have precedence over all other civil cases in such court, except preferred corporation Commission appeals. The Commission shall be deemed a party to such proceeding, and the Attorney-General, without extra compensation, shall represent the Commission therein. Such action shall be subject to the law and practice applicable to other civil actions cognizable in said court. Upon the final determination of said action in which the award or decision of the Commission is sought to be reviewed, the Commission shall make an order or decision in accordance with the judgment of said court. The Commission shall not be liable for any costs apart from said proceeding, but otherwise the costs shall be taxed as in other cases.

§ 14. Costs—How taxed.—If the Commission or the court before which any proceedings for compensation, or concerning an award of compensation, have been brought under this Act, determine that such proceedings have not been so brought on reasonable ground it shall assess the whole cost of the proceedings on the party who has so brought them. Claims for legal services in connection with any claim arising under this Act, and claims for services or treatment rendered or supplies furnished pursuant to Section 4 of Article 2 of this Act, shall not be enforceable unless approved by the Commission. If so approved such claim or claims shall become a lien upon the compensation awarded, but shall be paid therefrom only in the manner fixed by the Commission.

§ 15. Payments—How and when made.—Compensation under the provisions of this Act shall be payable periodically, in accordance with the method of payment of the wages of the employee at the time of his injury, and shall be so provided for in any award, but the Commission may determine that all payment or payments may be made monthly or at other periods, as it may deem advisable. The Commission, whenever it shall so deem advisable, may commute such periodical payments to one or more lump sum payments, provided the same shall be in the interest of justice. All payments as required by the award shall be made to the injured employee in the manner and form prescribed by the Commission. And employers and insurance companies shall for such purposes be permitted, or when necessary to protect the interests of the beneficiary may be required to make deposits with the Commission to secure the prompt and convenient payment of such compensation.

§ 16. Failure to pay—Penalty.—If payment of compensation, or an instalment thereof, due under the terms of an award, except in case of appeal from an award, be not made within ten days after the same is due, by the employer, or insurance corporation liable therefor, the amount of such payment shall constitute a liquidated claim for damages against such employer or insurance corporation, which, with an added penalty of 50 per centum, may be recovered in an action to be instituted by the Commission in the name of the people of the State. If such default be made in the payment of an instalment of compensation, and the whole amount of such compensation be not due, the Commission may, if the present value of such compensation be computable, declare

the whole amount thereof due and recover the amount thereof with the added penalty of 50 per centum, as provided in this section. Any such action may be compromised by the Commission, or may be prosecuted to final judgments, as in the discretion of the Commission, may best serve the interests of the persons entitled to receive the compensation for the benefits. Compensation recovered under this section shall be disbursed by the Commission to the persons entitled thereto in accordance with the award. A penalty recovered pursuant to this section, shall be paid into the State Treasury and be applicable to the expenses of the Commission.

§ 17. Rights barred after one year's neglect.—The right to claim compensation under this Act shall be forever barred unless within one year after the injury a claim for compensation thereunder shall be filed with the Commissioner.

§ 18. Damage by wrong of outsider—Whom to prosecute—Election.—If a workman entitled to compensation under this Act be injured by the negligence or wrong of another not in the same employ, such injured workman shall, before any suit or claim under this Act, elect whether to take compensation under this Act or to pursue his remedy against such other. Such election shall be evidenced in such manner as the Commission may by rule or regulation prescribe. If he elects to take compensation under this Act, the cause of action against such other shall be assigned to the insurance carrier liable for the payment of such compensation, and if he elects to proceed against such other person or insurance carrier, as the case may be, shall contribute only the deficiency, if any, between the amount of the recovery against such other person actually collected and the compensation provided or estimated by this Act for such case. The compromise of any such cause of action by the workman at any amount less than the compensation provided for by this Act shall be made only with the written approval of the Commission, and otherwise with the written approval of the person or insurance carrier liable to pay the same.

§ 19. Benefits of savings not considered.—No benefits, saving or insurance of the injured employee independent of the provisions of this Act shall be considered in determining the compensation or benefit to be paid under this Act.

§ 20. Employé's agreements to pay premiums invalid—Penalty.—No agreement by any employee to pay any portion of the premium paid by his employer to the cost of mutual insurance or other insurance, maintained for or carried for the purpose of providing compensation as herein required, shall be valid, and any employer who makes a deduction for such purpose from the wages or salary of any employee entitled to the benefits of this Act shall be guilty of a misdemeanor.

§ 21. Waivers invalid.—No agreement by an employee to waive his right to compensation under this Act shall be valid.

§ 22. Claims non-assignable—Levy, attachment, etc.—Claims for compensation or benefits due under this Act shall not be assigned, released or commuted except as provided by this Act, and shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived. Compensation and benefits shall be paid only to employees.

§ 23. Liens for compensation.—The right of compensation granted by this Act shall have the same preference or lien, without limit of amount, against the assets of the employer, as is now or hereafter may be allowed by law for a claim for unpaid wages for labor.

ARTICLE THREE

§ 1. Employer's insurance—Manner and forms.—An employer shall secure compensation to his employees in one of the following ways:

(a) By insuring and keeping insured the payment of such compensation with any stock corporation or mutual association or by exchanging contracts of indemnity or inter-insurance, under reasonable regulations prescribed by the Commission, providing for and securing the payment of the compensation provided in this Act, or other concern authorized to transact the business of workmen's compensation insurance in this State. If insurance be so effected in such a corporation or mutual association or reciprocal or inter-insurance association, the employer shall forthwith file with the Commission, in form prescribed by it, a notice specifying the name of such insurance corporation, or mutual association or reciprocal or inter-insurance association, together with a copy of the contract or policy of insurance.

(b) By obtaining and keeping in force guaranty insurance with any company authorized to do such guaranty business in the State, or

(c) Subject to the approval of the Commission, any employers may enter into or continue an agreement with his or their workman to provide a scheme of compensation, benefit or insurance in lieu of the compensation and insurance provided by this Act; but such scheme shall in no instance provide less than the benefits here secured nor vary the period of compensation provided for disability or the provisions of this Act, with respect to periodic payments or the percentage that such payments shall bear to weekly wages, except that the sums required may be increased; provided, further, that the approval of the State Industrial Commission shall be granted, if the scheme provides for contributions by workmen, only when it confers benefits in addition to those required by this Act commensurate with such contributions.

(d) By furnishing satisfactory proof to the Commission of his financial ability to pay such compensation for himself, in which case the Commission may, in its discretion, require the deposit with the Commission of securities or indemnity bond in an amount and of a kind to be determined by the Commission, to secure his liability to pay the compensation provided in this Act.

If an employer fail to comply with this section, he shall be liable to a penalty for every day during which such failure continues of One Dollar for every employee, to be recovered in an action brought before the Commission.

The Commission may, in its discretion, for good cause shown, remit any such penalty, provided the employer in default secure compensation as provided in this section.

§ 2. Compliance—Posted notices.—Every employer who has complied with Section 1 of Article 3 of this Act, shall post and maintain in a conspicuous place or places in and about his place or places of business typewritten or printed notices in form prescribed by the Commission, stating the fact that he has complied with all the rules and regulations of the Commission, and that he has secured the payment of compensation to his employees and their dependents in accordance with the provisions of this Act.

§ 3. Failure to secure—Power of Commission.—Failure on the part of any employer to secure the payment of compensation provided in this Act shall have the effect of enabling the Commission to proceed on behalf of an injured employee of such employer against the employer as provided in Section 2 of Article 2 of this Act, and as provided in Section 1 of Article 3 of this Act.

§ 4. Policies—Requirements in general.—(a) Every policy of insurance covering the liability of the employer for compensation issued by a stock company or by a mutual association or other concern authorized to transact workmen's compensation insurance in this State, shall contain a provision setting forth the right of the Commission to enforce in the name of the people of the State of Oklahoma for the benefit of the person entitled to the compensation insured by the policy, either by filing a separate application or by making the insurance carrier a party to the original application, the liability of the insurance carrier in whole or in part for the payment of such compensation; provided, however, that payment, in whole or in part of said compensation, by either the employer or the insurance carrier, shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

(b) Every such policy shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this Act, be jurisdiction of the insurance carrier, and the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer for the payment of compensation under the provision of this Act.

(c) Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer shall not relieve the insurance carrier from the payment of compensation for injuries sustained by an employee during the life of such policy.

(d) Every such policy shall contain a provision that, as the purpose of which is to indemnify him from loss or damage on account of the injury of an employee by accidental means, or on account of the negligence of such employer or his officer, agent or servant shall be absolutely void unless it shall also cover liability for the payment of the compensation provided for by this act.

(e) No contract of insurance issued by a stock company or mutual association or other concern against the liability rising under this Act shall be canceled within the time limited in such contract for its expiration until at least ten days after notice of intention to cancel such contract, or a date specified in such notice, shall be filed in the office of the Commission and also served on the employer. Such notice shall be served on the employer by delivering it to him or by sending it by mail, by registered letter, addressed to the employer at his or its last-known place of residence, provided, that if the employer be a partnership, then such notice may be so given to any one of the partners, and if the employer be a corporation, then the notice may be given to any agent or officer of the corporation upon whom legal process may be served.

ARTICLE FOUR

§ 1. State Industrial Commission.—A State Industrial Commission is hereby created, consisting of three commissioners, to be appointed by the Governor by and with the consent of the Senate, one of whom shall be desig-

nated by the Governor as Chairman. The term of office of the members of the Commission shall be six years, except that the first members thereof shall be appointed for such terms that the term of one member shall expire on January First, Nineteen Hundred and Seventeen, and one on January First, Nineteen Hundred and Nineteen, and one on January First, Nineteen Hundred and Twenty-one. Successors shall be appointed in like manner for a full term of six years. Vacancies shall be filled in like manner by appointment for the unexpired term. Each member of the Commission shall, before entering upon the duties of his office, execute an official undertaking in the sum of Ten Thousand Dollars, to be approved by the Governor and filed in the office of the Secretary of State. The Governor may remove any Commissioner for inefficiency, neglect of duty or misconduct in office, giving him a copy of the charges and an opportunity of being publicly heard in person or by counsel, upon not less than ten days' notice. If such a Commissioner be removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against him, and a complete record of his proceedings and his findings thereon. Each Commissioner shall devote his entire time to the duties of his office, and shall not hold any position of trust or profit, or engage in any occupation or business interfering or inconsistent with his duties as such Commissioner, or serve on or under any committee of a political party. The Commission shall have an official seal which shall be judicially noticed. The salary of each of the Commissioners shall be Twenty-five Hundred (\$2,500.00) Dollars per annum, except the salary of the Chairman of said Commission, which shall be Three Thousand (\$3,000.00) Dollars per annum, and shall be paid out of the State Treasury, and in addition to the said sum of Twenty-five Hundred (\$2,500.00) Dollars per annum, and Three Thousand (\$3,000.00) Dollars per annum, each Commissioner shall be allowed all traveling and necessary expenses incurred by him when away from the seat of government in the discharge of his official duty.

§ 2. Secretary to Commission—Assistants.—The Commission may employ a Secretary, an actuary and such inspectors and other assistants as it may deem necessary and fix their compensation, both the members and compensation of such employees to be subject to the written approval of the Governor; such compensation shall be paid on vouchers signed by at least two of the Commissioners and paid out of the appropriation provided therefor. The members of the Commission and the assistants shall be entitled to receive their actual necessary expenses while traveling on the business of the Commission. Such expenses shall be itemized and sworn to by the person who incurred the expenses and allowed by the Commission.

§ 3. Office of Commission—Supplies.—The Commission shall keep and maintain its principal office in the city of Oklahoma City, in rooms in the Capitol assigned by the Board of Affairs. The office shall be supplied with the necessary office furniture, supplies, books, maps, stationery, telephone connections and other necessary appliances at the expense of the State, payable in the same manner as other expenses of the Commission.

§ 4. Sessions—Quorum—Records.—The Commission shall be in continuous session and open for transaction of business during all business hours of every day excepting Sunday and legal holidays. All sessions shall be open to the public, and may be adjourned, upon entry thereof in its records, without further notice. Whenever convenience of parties will be promoted or delay

and expense prevented the Commission may hold session anywhere in the State. Every vote and official act of the Commission shall be entered of record, and the record shall contain a record of each case considered, and the award, decision or order made with respect thereto, and all voting shall be by calling of each Commissioner's name by the secretary, and each vote shall be recorded as cast. A majority of the Commission shall constitute a quorum. A vacancy shall not impair the right of the remaining Commissioners to exercise all the powers of the full Commission so long as the majority remains.

§ 5. Hearings—When held—Court power.—Any investigation, inquiry or hearing, which the Commission is authorized to hold or undertake, may be held or taken at any place in the State by or before any Commissioner, and the award, decision or order of a Commissioner, when approved and confirmed by the Commission, and ordered filed in the office, shall be deemed to be the award, decision or order of the Commission. Each Commissioner shall, for the purpose of this Act, have power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance of witnesses, and the production of books, accounts, papers, records, documents and testimony. The Commission may authorize any inspector to conduct any such investigation, inquiry or hearing, in which case he shall have the power of a Commissioner in respect thereof.

§ 6. Secretary—Power and duties.—The Secretary of the Commission shall:

First. Maintain a full and true record of all proceedings of the Commission, of all documents or papers ordered filed by the Commission, of decisions or orders made by a Commissioner, and of all decisions or orders made by the Commission or approved and confirmed by it and ordered filed, and he shall be responsible to the Commission for the safe custody and preservation of all such documents at its office.

Second. Have power to administer oaths in all parts of the State, so far as the exercise of such power is properly incident to the performance of his duty or that of the Commission.

Third. Designate from time to time, with the approval of the Commission, one of the clerks appointed by the Commission, to exercise the powers and duties of the Secretary during his absence.

Fourth. Under the direction of the Commission, have general charge of its office, superintend its clerical business, and perform such other duties as the Commission may prescribe.

§ 7. Rules and regulations.—The Commission shall adopt reasonable rules, not inconsistent with this Act, regulating and providing for:

First. The kind and character of notices, and the service thereof, in case of accident and injury to employees.

Second. The nature and extent of the proofs and evidence, and the method of taking and furnishing the same, to establish the right to compensation.

Third. The forms of application of those claiming to be entitled to compensation.

Fourth. The method of making investigations, physical examinations and inspections.

Fifth. The time within which adjudication and awards shall be made.

Sixth. The conduct of hearing investigations and injuries.

Seventh. The giving of undertakings by all subordinates who are empowered to receive and disburse moneys, to be approved by the Attorney-General as to forms and by the Governor as to sufficiency.

Eighth. Carrying into effect the provisions of this Act.

§ 8. Record of hearings—Objections to evidence.—The Commission or Commissioner or Inspector in making an investigation or inquiry or conducting a hearing shall be required to preserve a complete record of all oral or documentary evidence considered; to any part of such evidence any party affected thereby may object, which objection shall be considered and passed on by the Commission and preserved in the record.

§ 9. Subpoenas—Issuance and service.—A subpoena shall be signed and issued by a Commissioner, an Inspector or by the Secretary of the Commission, and may be served by any person of full age and in the same manner as subpoena issued out of a court of record. If a person fail without reasonable cause to attend in obedience to a subpoena, or to be sworn or examined or answer a question, or produce a book or paper, or to subscribe and swear to his deposition after it has been correctly reduced to writing, he shall be guilty of a misdemeanor.

§ 10. Enforcement of orders—Contempt.—In case of disobedience of any person to comply with the order of the Commission, or subpoena issued by it, or one of its members, or on the request of a witness to testify to any matter regarding which he may be lawfully interrogated, or refuse to permit an inspection as aforesaid, the County Judge of the County in which the person resides, or of the County, in which such hearing is being conducted, on application of any member of the Board, or any inspector or examiner appointed by it, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of requirements of subpoena issued from such court on a refusal to testify therein.

§ 11. Witness fees—How paid.—Each witness who appears in obedience to a subpoena before the Commission, or a Commissioner, Inspector or a person employed by the Commission to obtain the required information, shall receive for his attendance the fee and mileage provided for witnesses in civil case in courts of record, which shall be audited and paid out of funds appropriated therefor in the same manner as other expenses of the Commission. A witness subpoenaed at the instance of a party other than the Commission, a Commissioner, Inspector or person acting under the authority of the Commission, shall be entitled to fees for compensation from the funds appropriated therefor if the Commission certify that his testimony was material to the matter investigated, but not otherwise.

§ 12. Depositions.—The Commission may cause depositions of witnesses residing within or without the State to be taken in the manner prescribed by law for depositions in civil actions in courts of record.

§ 13. Transcripts of evidence—Legal acceptance.—A transcribed copy of the testimony, evidence and procedure of a specific part thereof, or of the testimony of a particular witness or of a specific part thereof on any investigation, by a stenographer appointed by the Commission, being certified by such stenographer to be a true and correct transcript thereof, and to have been carefully compared by him as the original notes, may be received in evidence by the Commission with the same effect as if said stenographer were present and testified to the facts so certified, and a copy of such transcript shall be

furnished on demand to any party upon payment of the fee provided for a transcript of similar minutes in courts of record.

§ 14. **Amendment of orders—Continuing jurisdiction.**—The power and jurisdiction of the Commission over each case shall be continuing, and it may, from time to time, make such modification or change with respect to former findings or orders relating thereto, as in its opinion may be just, including the right to require physical examination as provided for in Section 9 of Article 2 of this Act, and subject to the same penalties for refusal.

§ 15. **Report to Governor.**—Annually, on or before the first day of January, the Commission shall make a report to the Governor, to be by him transmitted to the Legislature, which shall include a statement of the number of awards made by it and the causes of the accidents leading to the injuries for which the awards were made, a detailed statement of the expenses of the Commission, together with any other matter which the Commission deems proper to report to the Governor, including any recommendations it may desire to make.

§ 16. **Blanks—Forms, applications, etc.**—The Commission shall prepare and cause to be distributed, so that the same may be really available, blank forms of application for compensation, notice to employers, proofs of injury, of medical or other attendance or treatment, of employment and wage earnings, and for such other purposes as may be required. Insured employers shall constantly keep on hand a sufficient supply of such blanks.

ARTICLE FIVE

§ 1. **Expenses of Commission—Penalties imposed by Act.**—All penalties imposed by this Act, shall be applicable to the expenses of the Commission. When collected by the Commission such penalties shall be paid into the State Treasury, and be thereafter appropriated by the Legislature for the purposes prescribed by this section.

§ 2. **Employer's record of injuries—Report to Commission—Penalty for neglect.**—Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within ten days or a reasonable time thereafter, after the occurrence of any accident resulting in personal injury a report thereof shall be made in writing by the employer to the Commission upon blanks to be procured from the Commission for that purpose. Such reports shall state the name and nature of the business of the employer, the location of his establishment or place of work, the name, address, and occupation of the injured employee, the time, nature and cause of the injury and such other information as may be required by the Commission. Any employer who refuses or neglects to make a report as required by this section shall be guilty of a misdemeanor, punishable by a fine of not more than Five Hundred (\$500.00) Dollars.

§ 3. **Securing information—Examination of employers.**—Every employer shall furnish the Commission upon request any information required by it to carry out the provisions of this Act. The Commission, a Commissioner, or any inspector, may examine under oath any employer, officer, agent, or employee. An employer or employee receiving from the Commission a blank with directions to file the same shall cause the same to be properly filled out so as to answer fully and correctly all questions therein, or if unable to do so, shall give a good and sufficient reason for such failure. Answers to such

questions shall be certified under oath and returned to the Commission within the period fixed by the Commission therefor.

§ 4. Employer's records and books—Subject to inspection—Other evidence.—All books, records and pay rolls of the employers showing or reflecting in any way upon the amount of wage expenditures of such employers shall always be open for inspection by the Commission or any other authorized auditors, accountants, or inspector for the purpose of ascertaining the correctness of the wage expenditure and number of men employed and such other information as may be necessary for the purposes and uses of the Commission in the administration of this Act. No person shall be excused from testifying or from producing any books or papers or documents in any investigation or inquiry, by or upon any hearing before the Commission or any Commissioner, when ordered to do so by the Commission or its Secretary, upon the ground that the testimony or pay roll or other competent evidence required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall, under oath, have, by order of the Commission or a Commissioner or its inspector or examiner, testified to or produced documentary evidence of; provided, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony.

§ 5. Act applicable to carriers.—The provisions of this Act shall apply to employers and employees engaged in intrastate commerce and also to those engaged in interstate or foreign commerce for whom no rule of liability has been established by the Congress of the United States.

§ 6. False statements—Misdemeanor.—If for the purpose of obtaining any benefit or payment under the provisions of this Act, either for himself or any other person, any person willfully makes a false statement or representation, he shall be guilty of a misdemeanor.

§ 7. Limitations of time—Exceptions.—No limitation of time provided in this Act shall run as against any person who is mentally incompetent or a minor dependent so long as he has no committee, guardian or next friend.

§ 8. Commissioner of Labor to assist.—The Commissioner of Labor shall render to the Commission any proper aid and assistance by the Department of Labor as in his judgment does not interfere with the proper conduct of such Department.

§ 9. Validity of sections declared independent.—If any section or provision of this Act be decided by the Courts to be unconstitutional or invalid, the same shall not effect the validity of this Act as a whole or any part thereof, other than the part so decided to be unconstitutional or invalid.

§ 10. Pending actions.—This Act shall not affect any action pending or cause of action existing or which accrued prior to September 1, 1915.

ARTICLE SIX

§ 1. Death or injury resulting in death.—It is not intended that any of the provisions of this Act shall apply in cases of accidents resulting in death and no right of action for recovery of damages for injuries resulting in death is intended to be denied or affected.

§ 2. Personal injuries—Court jurisdiction—Superseded by Commission.—The right of action to recover damages for personal injuries not resulting

in death arising and occurring in hazardous employments as herein defined, except the right of action reserved to the State Industrial Commission for the benefit of an injured employee in Section 2 of Article 2 of this Act, is hereby abrogated, and all jurisdiction of the courts of this State over such causes, except as to the cause reserved to the State Industrial Commission for the benefit of injured employees in Section 2 of Article 2 of this Act, is hereby abolished.

§ 3. Act, when effective.—This Act shall take effect July 1, 1915, provided that the application of this Act as between employers and employees and the payment of compensation for injuries to employees shall take effect September 1, 1915.

OREGON

WORKMEN'S COMPENSATION LAW

Section

1. Conditions demanding the law.
2. Appointment of Commission.
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WORKMEN'S COMPENSATION LAW

(Laws 1913, c. 112, as amended.)

§ 1. Conditions demanding the law.—The State of Oregon recognizes that the prosecution of the various industrial enterprises which must be relied upon to create and preserve the wealth and prosperity of the State involves the injury of large numbers of workmen, resulting in their partial or total incapacity or death, and that under the rules of the common law and the provisions of the statutes now in force an unequal burden is cast upon its citizens, and that in determining the responsibility of the employer

on account of injuries sustained by his workmen, a great and unnecessary cost is now incurred in litigation, which cost is divided between the workmen, the employers and the taxpayers, who provide the public funds, without any corresponding benefit, to maintain courts and juries to determine the question of responsibility under the law as it now exists, and that the State and its taxpayers are subjected to a heavy burden in providing care and support for such injured workmen and their dependents, and that this burden should, in so far as may be consistent with the rights and obligations of the people of the State, be more fairly distributed as in this Act provided.

§ 2. Appointment of Commission.—A commission is hereby created which shall be known as the "State Industrial Accident Commission," to be composed of three commissioners. Immediately upon the taking effect of this Act, the Governor shall appoint such Commissioners, not more than two of whom shall belong to one political party. Each Commissioner appointed hereunder shall hold office until his successor is appointed and qualified. Any vacancy shall be filled by appointment by the Governor. Inasmuch as the duties to be performed by such Commissioners vitally concern the employers, the employes, as well as the whole people, of the State, it is hereby declared to be the purpose of this Act that persons be appointed as Commissioners who shall fairly represent the interests of all concerned in its administration.

§ 3. Removal of commissioners.—The Governor may at any time remove any Commissioner appointed by him.

No commissioner shall hold any other office or position of profit or pursue any other business or vocation or serve on or under any committee of any political party, but shall devote his entire time to the duties of his office.

Oath.—Before entering on the duties of his office, each Commissioner shall take and subscribe to an oath or affirmation that he will support the constitution of the United States and of this State and faithfully and honestly discharge the duties of such office of Commissioner; that he holds no other office or position of profit, and that he pursues and will pursue while such Commissioner no other calling or vocation, and that he holds, and while such Commissioner will hold, no position under any political party, which oath or affirmation shall be filed in the office of the Secretary of State.

Bond.—Each of the Commissioners shall also, before entering upon the duties of his office, execute a bond payable to the State of Oregon, in the penal sum of \$10,000.00, with sureties to be approved by the Governor, conditioned for the faithful discharge of the duties of his office, which bond when so executed and approved shall be filed in the office of the Secretary of State.

Salary.—Each of the Commissioners shall receive an annual salary of thirty-six hundred dollars (\$3,600.00), payable from the fund hereinafter provided.

§ 4. Organization.—The commissioners so appointed under this Act shall, within twenty days after their appointment, meet at the State Capitol and organize by electing one of their number chairman, who shall serve until the Commissioner to be appointed for the term commencing in January, 1915, shall have qualified and taken office. Immediately after the qualification of the Commissioner for the term commencing in January, 1915, and biennially thereafter, the Commissioners shall meet at the office of the Commission, which shall be maintained at the State Capitol, and shall

elect a chairman, who shall serve for two years and until his successor is chosen.

§ 5. **Quorum.**—A majority of the Commissioners shall constitute a quorum to transact business, and the act or decision of any two of the Commissioners shall be deemed the act or decision of the Commission. No vacancy shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

§ 6. **Employment of assistants.**—The Commission may employ and terminate the employment of such assistants, experts and clerks as may be required in the administration of this Act at a total expense not exceeding twenty-five thousand dollars (\$25,000.00) per annum.

§ 7. **Power to subpoena witnesses.**—The Commission, in its name, may sue and be sued, and the Commission shall have a seal which shall bear the name of the Commission. The Commission is hereby charged with the administration of the provisions of this Act, and to that end may hold sessions at any place within the State, and is hereby authorized to issue subpoenas requiring the attendance of witnesses and the production of documents, and obedience to such subpoenas may be compelled, on application of the Commission, by the Circuit Court for the county where such subpoenas shall be returnable.

§ 8. **Rules and regulations—Reports of employers.**—The Commission is hereby authorized to make and declare all rules and regulations which shall reasonably be required in the administration of the provisions of this Act, and shall require the making of reports of accidents, reports of amounts paid or agreed to be paid as wages by employers to workmen and may prescribe and require the use of the payroll form by employers which shall carry such specific information as may be deemed necessary by the Commission, and may incur such expenses as the Commission shall determine reasonably necessary in the administration of this Act.

§ 9. **Reports of Commission.**—The Commission is hereby required to render to the Governor of the State, quarter yearly, a report with full statistical information covering the acts of the Commission and the receipt and disbursement of moneys hereunder.

§ 10. **Elective privilege of employers.**—All persons, firms and corporations engaged as employers in any of the hazardous occupations hereafter specified shall be subject to the provisions of this Act; provided, however, that any such person, firm or corporation may be relieved of certain of the obligations hereby imposed, and shall lose the benefits hereby conferred by filing with the Commission written notice of an election not to be subject thereto in the manner hereinafter specified; provided, however, that where an employer is engaged in a hazardous occupation, as hereinafter defined, and is also engaged in another occupation or other occupations not so defined as hazardous, he shall not be subject to this Act as to such non-hazardous occupations, nor shall his workmen wholly engaged in such non-hazardous occupations be subject thereto except by an election as authorized by Section 31 thereof. Provided, however, that employers and employes who are engaged in an occupation partly hazardous and partly non-hazardous shall come within the terms of this Act the same as if said occupation were wholly hazardous.

§ 11. **Elective privilege of employes.**—All workmen in the employ of persons, firms or corporations who as employers are subject to this Act shall

also be subject thereto; provided, however, that any such workman may be relieved of the obligations hereby imposed and shall lose the benefits hereby conferred by giving to his employer written notice of an election not to be subject thereto in the manner hereinafter specified. Any workman of the age of 16 years and upwards shall himself exercise the election hereby authorized. The right of election hereby authorized shall be exercised on behalf of any workman under the age of 16 years by his parent or guardian. This Act shall not apply to workmen of less than the minimum age prescribed by law for the employment of minors in the occupation in which such workmen shall be engaged.

§ 12. What accidents compensated.—Every workman subject to this Act while employed by an employer subject to this Act who after June 30, next following the taking effect of this Act, while so employed sustains personal injury by accident arising out of and in the course of his employment and resulting in his disability, or the beneficiaries, as hereinafter defined, of such workman in case such injury results in death, shall be entitled to receive from the Industrial Accident Fund hereby created the sum or sums hereinafter specified and the right to receive such sum or sums shall be in lieu of all claims against his employer on account of such injury or death except as hereinafter specially provided. Provided, however, that if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children or dependents, as the case may be, shall elect whether to take under this Act or seek a remedy against such other, such election to be in advance of any suit, and if he take under this Act the cause of action against such other shall be assigned to the State for the benefit of the accident fund. If the other choice is made the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected and the compensation provided or estimated by this Act for such case. Any such cause of action assigned to the State may be prosecuted or compromised by the department in its discretion. Any compromise by the workman of any such suit which would leave a deficiency to be made good out of the accident fund may be made only with the written approval of the department.

§ 13. Hazardous occupations defined.—The hazardous occupations to which this Act is applicable are as follows:

Factories, mills and workshops where machinery is used; printing, electrotyping, photo-engraving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gas works, water works, reduction works, breweries, elevators, wharves, docks, dredges, smelter, powder works, laundries operated by power; quarries; engineering works; logging, lumbering and ship-building operations; logging, street and interurban railroads not engaged in interstate commerce; buildings being constructed, repaired, moved or demolished; telegraph, telephone, electric light or power plants, or lines, steam heating or power plants, railroads not engaged in interstate commerce, steamboats, tugs and ferries.

§ 14. Definitions.—In the sense of this Act words employed mean as here stated, to wit:

Factories.—Factories mean undertakings in which the business of working at commodities is carried on with power-driven machinery, either in manu-

facture, repair or change, and shall include the premises, yard and plant of the concern.

Workshop.—Workshop means any plant, yard, premises, room or place wherein power-driven machinery is employed and manual labor is exercised by way of trade for gain or otherwise in or incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale or otherwise any article or part of any article, machine or thing, over which premises, room or place the employer of the person working therein has the right of access or control.

Mill.—Mill means any plant, premises, room or place where machinery is used, any process of machinery, changing, altering or repairing any article or commodity for sale or otherwise, together with the yards and premises which are part of the plant, including elevators, warehouses and bunkers.

Mine.—Mine means any mine where coal, clay, ore, mineral gypsum or rock is dug or mined underground.

Quarry.—Quarry means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, gravel, or rock is cut or taken for manufacturing, building or construction.

Engineering work.—Engineering work means any work of construction, improvement or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads not then engaged in interstate commerce, logging roads, interurban railroads not then engaged in interstate commerce, harbors, docks, canals, electric, steam or water power plants, telegraph and telephone plants and lines; electric light or power lines, and includes any other works for the construction, alteration or repair of which machinery driven by mechanical power is used.

Employer.—The term "employer" used in this Act shall be taken to mean any person, firm or corporation, but not including municipal corporations, that shall contract for and secure the right to direct and control the services of any person, and the term "workman" shall be taken to mean any person, male or female, who shall engage to furnish his or her services subject to the direction or control of an employer.

Member of corporation—When workman.—Any member or officer of any corporate employer who shall be carried upon the payrolls at a salary or wage not less than the average salary or wage of such payroll, but not otherwise, shall be deemed to be a workman.

Dependent.—Dependent means any of the following named relatives of a workman whose death results from any injury and who leaves surviving no widow, widower or child under the age of sixteen years, viz.: Invalid child over the age of sixteen years, daughter between sixteen and eighteen years of age, father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-sister, half-brother, niece, nephew, who, at the time of the accident are dependent in whole or in part for their support upon the earnings of the workman. Except where otherwise provided by treaty, aliens other than father or mother, husband and wife or children, not residing within the United States at the time of the accident, are not included.

Beneficiary.—Beneficiary means a husband, wife, child, or dependent of a workman, in whom shall vest a right to receive payment under this Act.

Invalid.—Invalid means one who is physically or mentally incapacitated from earning.

Child.—The word "child," as used in this Act, includes a posthumous child, a child legally adopted prior to the injury and an illegitimate child legitimated prior to the injury.

§ 15. Elective privilege of employers—Loss of defenses.—Any employer engaged in any of such hazardous occupations who would otherwise be subject to this Act, may on or before June 15 next following the taking effect of this Act file with the Commission a statement in writing declaring his election not to contribute to the Industrial Accident Fund hereby created, and thereupon such employer shall be relieved from all obligations to contribute thereto, and such employer shall be entitled to none of the benefits of this Act, and shall be liable for injuries to or death of his workmen, which shall be occasioned by his negligence, default or wrongful act as if this Act had not been passed, and in any action brought against such an employer on account of an injury sustained after June 30 next following the taking effect of this Act, it shall be no defense for such employer to show that such injury was caused in whole or in part by the negligence of a fellow-servant of the injured workman, that the negligence of the injured workman, other than his wilful act, committed for the purpose of sustaining the injury, contributed to the accident, or that the injured workman had knowledge of the danger or assumed the risk which resulted in his injury.

Employers to post notices.—Any person, firm or corporation hereafter engaging as an employer in any of said hazardous occupations may file a like notice with said Commission within ten days after becoming such employer and shall thereby and thereupon become relieved from making contributions to said fund and shall be liable to his workmen as in the case of existing employers so electing and shall as in the case of such employers lose all benefit of the defenses above described. From and after June 30 next following the taking effect of this Act, all employers engaged in said hazardous occupations shall display in a conspicuous manner about their works and in a sufficient number of places reasonably to inform their workmen of the fact, printed notices stating that they are or are not, as the case may be, contributors to the fund. The failure of an employer to display such notices shall be a misdemeanor.

§ 16. Employers automatically subject to the act.—All such employers who shall not as herein provided give to the Commission written notice of their election not to contribute to said fund, shall be subject to all of the provisions of this Act until and including the next succeeding thirtieth day of June, and thereafter until and including June 30 of each succeeding year, unless at least 60 days prior to June 30 in some year written notice shall be given to said Commission of an election to cease contributing to such fund, whereupon from and after the succeeding first day of July the status of the employer giving such notice shall be that resulting from the giving of the notice first above prescribed.

§ 17. Recall of notice by employer.—An employer who has so elected not to contribute hereunder may at any time by giving to said Commission 30 days' written notice recall such election, and from and after the expiration of such 30 days such employer shall become and continue in all respects subject to this Act.

§ 18. Elective privileges of employés—Optional rights under certain circumstances.—On or before June 30 next following the taking effect of this Act any workman in the employ of an employer subject to this Act may give

notice in writing to his employer of his election not to become subject to this Act, and any workman entering the employment of such an employer after such date may at such time give a like notice and thereupon such workman shall be in no wise subject to the provisions or entitled to any of the benefits hereof. Any workman in the employ of an employer who shall have elected not to contribute to the fund hereby created and who shall have recalled such election, may within fifteen days after such recall by his employer has become effective, give notice in writing to his employer of his election not to become subject to this Act, and thereupon such workman shall in no wise be subject to the provisions or entitled to any of the benefits hereof. But if such workman shall sustain an injury within such period of fifteen days and before he shall have elected not to become subject to this Act, he shall have the option to be exercised before suit brought, of taking the benefits herein provided or of proceeding against his employer as if this Act had not been passed. Any workman who shall be in the employ of an employer who shall hereafter engage in any of said hazardous occupations and who shall have become subject to this Act, may give notice in writing to his employer within fifteen days after his employer shall have engaged in such hazardous occupations, of his election not to become subject to this Act, and thereupon and thereafter such workman shall be in no wise subject to the provisions or entitled to any of the benefits hereof, but if such workman shall sustain an injury within such period of 15 days and before he shall have elected not to become subject to this Act, he shall have the option, to be exercised before suit brought, of taking the benefit hereby provided or of proceeding against his employer as if this Act had not been passed. Any workman who has so elected not to become subject to this Act may at any time by giving to his employer who is then subject to this Act, 30 days' notice, recall such election, and after expiration of such 30 days such workman shall become and continue in all respects subject to this Act.

Any workman who has become subject to this Act shall, if he remains in the service of the same employer, continue subject to this Act to and including the next succeeding thirtieth day of June and thereafter until and including the thirtieth day of June of each succeeding year unless at least 30 days prior to June 30th in some year he shall give written notice to his employer of his election not to be longer subject to this Act, whereupon and after the succeeding first day of July such workman shall be no longer subject to this Act.

§ 19. Source of Industrial Accident Fund.—Every employer engaged in any of the hazardous occupations enumerated in Section 13 hereof who shall not have served notice of his election not to contribute hereunder, as in this Act provided, shall, except as hereinafter provided, pay to the Commission on or before the 15th day of each month a percentage of his total pay roll for the preceding calendar month of workmen subject to this Act according to and at the rates hereinafter set forth, to wit:

Construction work.—

Sub-aqueous work; fire escapes; house moving; house wrecking;
 steeples, metal smokestacks; metal chimneys; iron or steel frame
 structures or parts of structures..... .080
 Tunnels; trestles; bridges; pile driving; jetties; breakwaters..... .065

Sewers; shaft sinking; ditches and canals (other than irrigation without blasting); erection of tanks; towers, not metal framed; windmills, not metal framed; roof work; freight and passenger elevators.....	.060
Electric light or power plants or systems; telegraph or telephone systems; steam or electric railroads with rock work or blasting; water-works or systems; roadwork with blasting; erecting fireproof doors or shutters; concrete buildings; galvanized iron or tin work, with scaffold; marble, stone or brickwork with scaffold; gas works or systems; excavation not otherwise specified; ship or boat building or wrecking; painting of buildings or structures, outside work.....	.050
Steam-heating plants; advertising signs; ornamental metal work or metal ceilings in buildings; carpenter work, not otherwise specified; ship or boat rigging; ship or mill wrighting; grain elevator, not metal framed	.040
Street railways without blasting; installation of steam boilers or engines; installation of dynamos; installation of automatic sprinklers; installation of machinery not otherwise specified; drilling wells.....	.035
Street or other grading; road making; concrete foundations; asphalt laying; covering steam pipes or boilers; construction work not otherwise specified; street paving.....	.030
Lathing; plastering	.025
Plumbing; house heating or ventilating systems; inside wiring, installation of electrical apparatus or fire alarm systems in buildings; marble, stone or tile setting, inside work; mantle setting; glass setting; paper hanging, decorating or painting, inside work; concrete and composition walks	.020

Operation (including repair work) of.—(All combinations of material take the higher rate when not otherwise provided.)

Logging railroads; railroads; wood saws; stevedoring; longshoring...	.050
Electric light or power plants; interurban electric railroads; stone crushing; quarries; mines other than coal.....	.040
Logging, with or without machinery; coal mines.....	.035
Dry or floating docks; steamboats; tugs; ferries; dredges; smelters; creosoting and wood-treating works.....	.030
Telephone or telegraph systems.....	.025
Street railways; garbage works; gas works; water works; steam heating or power plants; grain elevators or grain warehouses; flour, grain, chop and feed mills; gravel, sand and coal bunkers; operations not otherwise specified	.020

Factories using power-driven machinery.—

Stamping tin or metal.....	.050
Saw mills; shingle mills; lath mills.....	.035
Furniture, staves, veneer, box, packing-cases, sash, door or blinds, keg, pail, barrel, basket, tub, wooden ware or wooden fiber ware; work in wood not otherwise specified.....	.0275
Boiler works; paper or pulp mills.....	.025
Foundries	.0225

Canneries of fish or meat; cement manufacturing; soap, tallow and grease; brickettes; machine shops, not otherwise specified; iron, steel, copper, zinc, brass or lead articles or ware not otherwise specified; hardware; marble, stone or granite work (shop or monument erection); factories not otherwise specified.....	.020
Tile, brick, terra cotta, fire clay; pottery, charcoal, earthenware; porcelain; breweries; bottling works; paints, oils and varnishes.....	.015
Working in food stuffs, including oils, fruits and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber or textiles not otherwise specified; cordage; jewelry; laundries.....	.010
Condensed milk; creameries	.0075
Printing; electrotyping; photo-engraving; engraving; lithographing...	.0050

Miscellaneous work.—

Operations of power works; manufacture of fireworks.....	.080
Clearing land with blasting.....	.050
Making artificial ice; operating refrigerating or cold storage plants; operating tanneries; manufacture of fertilizer; operation of packing houses and stock yards.....	.020

Every employer who is hereby required to make such payments to the Commission is hereby authorized and required to retain from the moneys earned by each of his workmen subject to this Act the sum of one (1) cent a day for each day or part of day such workman shall be employed and to pay the sum so retained to the Commission at the time his own payment is due hereunder.

If only a part of an employer's workmen are engaged in any of the hazardous employments above specified the workmen of such employer not so engaged shall not be subject to this Act nor entitled to the benefits thereof. If an employer and his workmen are engaged in two or more of such hazardous employments for which different rates of contribution are prescribed the employer shall contribute according to the several rates applicable to the various employments in which his workmen are so engaged and according to his pay roll for each of such employments. Any workman engaged for the same employer in two or more of such hazardous employments shall for the purpose of determining the rate of contribution hereunder be deemed engaged solely in the employment taking the higher rate.

Whenever for a period of twelve months the total amount paid out of the Industrial Accident Fund or set apart therefrom as hereinafter provided on account of injuries sustained by the workmen of any employer shall not exceed fifty per cent of the amount contributed to said fund by such employer during such period, not including, however, moneys retained from his workmen's wages, the rate of contribution of such employer shall thereafter be reduced by ten per cent of the amount hereinbefore prescribed and whenever for a further period of 12 months the total amount so paid out and set aside shall not exceed 50 per cent of the amount so contributed by such employer his rate of contribution shall be further reduced by a like amount; provided, that such rate of contribution shall be immediately restored to the rate first above prescribed whenever the total amount paid out or set apart hereunder on account of injuries sustained by his workmen during the preceding 12 months shall exceed 50 per cent of his contributions to such fund during such period of 12 months, and provided further that no employer shall be entitled

to any such reduction if the Commission shall find that during the preceding 12 months he has wilfully failed to install or maintain any safety appliance, device or safeguard required by statute.

Whenever the Commission shall determine that the Industrial Accident Fund amounts to a sufficient sum to meet all payments which shall have then accrued, together with a surplus of 30 per cent thereon, and whenever there shall have been set apart by the State Treasury from said fund the amounts hereinafter required on account of injuries resulting in death or permanent disability, all employers who have contributed to said fund for the preceding six successive months shall be exempt from contributions hereunder for the current calendar month, and the workmen of such employers shall be likewise exempt from contributions hereunder.

§ 20. Industrial Accident Fund created.—There is hereby created a fund to be known as the Industrial Accident Fund, which fund shall be held by the State Treasurer and by him deposited in such banks as are authorized to receive deposits of the general funds of the State. All moneys received by the Commission hereunder shall be by it paid over forthwith to the State Treasurer and shall become a part of the Industrial Accident Fund, and there is hereby appropriated out of any moneys in the general fund in the State Treasury not otherwise appropriated the sum of fifty thousand dollars (\$50,000.00), which shall become a part of such fund. There is also appropriated annually out of any moneys in the State Treasury not otherwise appropriated a sum equal to one-seventh of the total sum which shall be received by the State Treasurer under the provisions of Section 19 hereof, and the moneys so appropriated shall become a part of such fund. All payments authorized by this Act, including all salaries, clerk hire and all other expenses, shall be made from the Industrial Accident Fund.

§ 21. Rate of compensation.—If any workman while he is subject to this Act and in the service of an employer who is thus bound to contribute to the Industrial Accident Fund shall sustain a personal injury by accident arising out of and in the course of his employment caused by violent or external means he, or his beneficiaries or dependents, if the injury result in death, shall receive compensation according to the following schedule:

(a) Where death results.—Where death results from the injury the expenses of burial shall be paid in all cases not to exceed one hundred dollars (\$100) in any case, and

(1) Spouse and children under sixteen surviving.—If the workman leaves a widow or invalid widower, a monthly payment of thirty dollars (\$30) shall be paid throughout the life of the surviving spouse, to cease at the end of the month in which remarriage shall occur; and the surviving spouse shall also receive six dollars (\$6) per month for each child of the deceased under the age of sixteen years at the time of the occurrence of the injury until such minor shall reach the age of sixteen years, but the total monthly payment under this paragraph (1) shall not exceed fifty dollars (\$50). Upon remarriage of a widow she shall receive once and for all a lump sum equal to ten times her monthly allowance, viz., the sum of three hundred dollars (\$300), but the monthly payments for the child or children shall continue as before.

(2) Children under sixteen alone surviving.—If the workman leaves no wife or husband but a child or children under the age of sixteen years, a monthly payment of fifteen dollars shall be made to each child until such child shall reach the age of sixteen years; provided, however, that if any child is

under the age of sixteen years and over the age of fifteen years, he shall be entitled to recover such payments for a period of one year, but the total monthly payment shall not exceed fifty dollars (\$50), and any deficit shall be deducted proportionately among the beneficiaries.

(3) No spouse or children surviving "dependents" take compensation.—If the workman leaves no widow, widower, or child under the age of sixteen years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to 50 per cent of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case, shall not exceed thirty dollars (\$30) per month. If any dependent is under the age of 16 years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent shall reach the age of 16 years, excepting a daughter, the payment to whom shall cease when she shall have reached the age of eighteen years. Provided, however, that if any child is under the age of sixteen years and over the age of fifteen years, he shall be entitled to recover such payments for a period of one year. The payment to any dependent shall cease if, and when under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

Parents surviving unmarried minor.—If the workman is under the age of 21 years and unmarried at the time of his death, the parents or parent of the workman shall receive twenty-five dollars (\$25) per month for each month after his death until the time at which he would have arrived at the age of 21 years; provided, however, that such parents shall be entitled thereafter to compensation as dependents under the provisions of the first clause of this paragraph three.

(4) Death of surviving spouse leaving children under sixteen.—In the event a surviving spouse receiving monthly payments shall die leaving a child or children under the age of 16 years, the sum he or she shall be receiving on account of such child or children shall thereafter until such child shall arrive at the age of 16 years, be paid to the child increased to fifteen dollars per month; provided, however, that if any such child is under the age of sixteen years and over the age of fifteen years he shall be entitled to recover such payments for a period of one year, but the total to all children shall not exceed the sum of fifty dollars (\$50) per month.

(b) Permanent total disability.—Permanent total disability means the loss of both legs or both arms, or one leg and one arm, total loss of eyesight, paralysis, or other condition permanently incapacitating the workman from performing any work at any gainful occupation.

When permanent total disability results from the injury, the workman shall receive monthly during the period of such disability:

(1) If unmarried at the time of the injury the sum of thirty dollars (\$30).

(2) If the workman have a wife or invalid husband, but no child under the age of 16 years, the sum of thirty-five dollars (\$35). If the husband is not an invalid the monthly payment of thirty-five dollars (\$35) shall be reduced to thirty dollars (\$30).

(3) If the workman have a wife or husband and a child or children under the age of 16 years, or being a widow or widower, have any such child or children, the monthly payment provided in the preceding paragraph shall be increased by six dollars (\$6) for each such child until such child shall arrive

at the age of 16 years, but the total monthly payment shall not exceed fifty dollars (\$50).

(c) If the injured workman die during such period of total disability, whatever the cause of death, leaving a widow, invalid widower, or child under the age of 16 years, the surviving widow, or invalid widower, shall receive thirty dollars (\$30) per month until death or remarriage, to be increased six dollars (\$6) per month for each child under the age of 16 years until such child shall arrive at the age of 16 years; but if such child is, or shall be, without father or mother, such child shall receive fifteen dollars (\$15) per month until arriving at the age of 16 years; provided, however, that if any child is under the age of 16 years and over the age of 15 years, he shall be entitled to recover such payment for the period of one year. The total combined monthly payment under this paragraph shall in no case exceed fifty dollars (\$50). Upon remarriage, the payments on account of a child or children shall continue as before to the child or children.

(d) **Higher rate where total disability only temporary.**—When the total disability is only temporary the schedule of payments contained in Paragraphs 1, 2 and 3 of the foregoing Subdivision b, shall apply so long as the total disability shall continue, increased 50 per cent for the first six months of such continuance, but in no case shall the increase operate to make the monthly payment exceed 60 per cent of the monthly wage (the daily wage multiplied by 26) the workman was receiving at the time of his injury.

(e) **Rate for temporary partial disability.**—When the disability is or becomes partial only and is temporary in character, the workman shall receive for a period not exceeding two years that proportion of the payments provided for total disability which his earning power at any kind of work bears to that existing at the time of the occurrence of the injury.

(f) **Permanent partial disability.**—Permanent partial disability means the loss of either one arm, one hand, one leg, one foot, loss of hearing in one or both ears, loss of one eye, one or more fingers, any dislocation where ligaments are severed, or any other injury known in surgery to be permanent partial disability. Where permanent partial disability shall result from any injury, the workman shall receive the sum of twenty-five dollars (\$25) a month for the period stated against such injury, respectively, as follows:

In case of the loss by separation of one arm at or above the elbow joint, or the permanent and complete loss of the use of one arm, ninety-six (96) months.

The loss by separation of one hand at or above the wrist joint, or the permanent and complete loss of the use of one hand, seventy-six (76) months.

The loss by separation of one leg, at or above the knee joint, or the permanent and complete loss of the use of one leg, eighty-eight (88) months.

The loss by separation of one foot at or above the ankle joint, or the permanent and complete loss of the use of one foot, sixty-four (64) months.

The permanent and complete loss of hearing in both ears, ninety-six (96) months.

The permanent and complete loss of hearing in one ear, forty-eight (48) months, or, at the option of the workman, nine hundred dollars (\$900) in a lump sum.

The permanent and complete loss of the sight of one eye, forty (40) months, or, at the option of the workman, eight hundred and fifty dollars (\$850) in a lump sum.

The loss by separation of a thumb, twenty-four (24) months, or, at the option of the workman, six hundred dollars (\$600) in a lump sum.

The loss by separation of a first finger, sixteen (16) months, or, at the option of the workman, three hundred fifty dollars (\$350) in a lump sum; the second finger nine (9) months, or, at the option of the workman, two hundred dollars (\$200) in a lump sum; a third finger, eight (8) months, or, at the option of the workman, one hundred and seventy-five dollars (\$175) in a lump sum; a fourth finger six (6) months, or, at the option of the workman, one hundred and fifty dollars (\$150) in a lump sum.

The loss of one phalange of the thumb shall be considered equal to the loss of one-half a thumb; the loss of one phalange of a finger, equal to the loss of one-third of a finger, and the loss of two phalanges of a finger, equal to the loss of one-half of a finger, and the compensation for the respective proportions of the above period or in the respective proportions of the above lump sum shall be payable. The loss of more than one phalange of a thumb, or more than two phalanges of a finger shall be considered as the loss of an entire thumb or finger.

The loss by separation of a great toe, ten (10) months, or, at the option of the workman, two hundred and fifty dollars (\$250) in a lump sum; any other toe, four (4) months, or, at the option of the workman, one hundred dollars (\$100) in a lump sum.

In all other cases of injury resulting in permanent partial disability, the compensation shall bear such relation to the periods stated in this clause as the disabilities bear to those produced by the injuries named in this schedule, and payments shall be made for proportionate periods, not exceeding, however, ninety-six (96) months, and in all such cases where the period of payment shall not exceed twelve (12) months, but in none other, shall the workman be entitled to a lump sum equal to the present value of such monthly payments computed at an interest rate of four per cent per annum.

Adjustment of compensation with development of injury.—If any workman entitled to compensation on account of a permanent disability shall have received compensation for either temporary total disability or temporary partial disability by reason of the same injury which shall entitle him to compensation for permanent partial disability, the number of months during which he shall be entitled to payments for such permanent partial disability shall be reduced by the number of monthly payments which he shall have received on account of such temporary total disability or temporary partial disability.

(g) Reserve to guarantee monthly payments—Segregated accident fund—How invested.—For every case of injury resulting in death, or permanent total disability or permanent partial disability on account of which deferred payments are provided for a period exceeding twenty-four (24) months, it shall be the duty of the Commission forthwith to notify the State Treasurer in writing of the amount required to equal at four per cent interest per annum the present worth of the monthly installments payable on account of such injury, the number of such payments being computed in case of permanent total disability according to the age of the injured workman, and in the case of death accordingly to the ages of the beneficiaries, both of such computations being according to the American Mortality Table and the expectation of life thereunder, and in the case of permanent partial disability according to the schedule above prescribed. Thereupon the State Treasurer shall trans-

fer from the Accident Fund to a fund to be known as the Segregated Accident Fund the amount so specified by the Commission. All moneys comprised in the Segregated Accident Fund shall be invested by the State Treasurer in the class of securities authorized for the investment by banks of savings deposits under the laws of this State. The Segregated Accident Fund and its earnings shall be charged with the payment of the installments on account of which such segregations shall be made. The State Treasurer shall keep an accurate account of the earnings of and payments from the Segregated Accident Fund and may borrow from the Accident Fund to meet monthly payments pending conversion into cash of any security and in such case shall repay such temporary loan out of the cash realized from the security. Any deficiency in the Segregated Accident Fund shall be made good out of and any balance or overplus shall revert to the Accident Fund.

(h) Further injury to employé receiving compensation.—Should a further accident occur to a workman already receiving a monthly payment under this section for a disability, or who has been previously the recipient of a lump sum payment under this Act, his future compensation shall be adjusted according to the other provisions of this section and with regard to the combined effect of his injuries and his past receipt of money under this Act.

(i) If aggravation, diminution or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated in any case, the Commission may, upon the application of the beneficiary, or upon its own motion, readjust for future application the rate of compensation in accordance with the rules in this section provided, or, in a proper case, terminate the payments.

(j) No compensation to deserting spouse.—A husband or wife of an injured workman who has deserted said injured workman for more than one year prior to the time of the injury or subsequently shall not be a beneficiary under this Act.

(k) Removal of beneficiary from state—Lump sum payments.—If a beneficiary shall reside or remove out of the State and shall have been such non-resident for a period of one year, the Commission may, in its discretion, convert any monthly payments thereafter to become due to such beneficiary into a lump sum payment, not in any case exceeding four thousand dollars (\$4,000), by paying a sum equal to three-fourths of the present value of such monthly payments, estimated as to duration by the life expectancy of the beneficiary in case of death or total permanent disability and computed according to the American Mortality Table and on the basis of interest at the rate of four per cent per annum, or, with the consent of the beneficiary for a lesser sum, and in any case the Commission may, in its discretion, pay over to any beneficiary in a lump sum an amount not exceeding one-fourth of the present value of the monthly installments payable to such beneficiary and computed as aforesaid, and thereupon all subsequent monthly installments shall be proportionately reduced.

§ 22. Injury deliberately intended.—If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death, neither the workman nor the widow, widower, child or dependent of the workman shall receive any payment whatsoever out of the Accident Fund. If injury or death results to a workman from the deliberate intention of his employer to produce such injury or death, the workman, the widow, widower, child or dependent of the workman shall have the privi-

lege to take under this Act, and also have cause of action against the employer, as if this Act had not been passed, for damages over the amount payable hereunder.

Minor of legal working age entitled to benefits.—A minor working at an age legally permitted under the laws of this State shall be deemed *sui juris* for the purposes of this Act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman except as expressly provided herein, but in the event of a lump sum payment becoming due under this Act to such minor workman, the control and management of any sum so paid shall be within the jurisdiction of the courts as in the case of other property of minors.

§ 23. First aid to injured workmen.—The Commission shall have authority to provide, under uniform rules and regulations, first aid to workmen who are entitled to benefits hereunder, together with transportation, medical and surgical attendance and hospital accommodations for injured workmen at an expense not exceeding two hundred and fifty dollars (\$250) in any one case, and to contract therefor in its discretion. The Commission may, in its discretion, authorize employers to furnish or provide, at the expense of the Commission and upon terms fixed by it, such transportation, attendance and accommodations; provided, however, that all such transportation, attendance and accommodations shall be at all times subject to the supervision and control of the Commission.

§ 24. Default of employer in payments—The penalty.—If any employer shall default in any payment to the Accident Fund hereinbefore required, the amount of such payment shall be collected by an action at law in the name of the Commission as plaintiff, and such right of action shall be in addition to any other right of action or remedy. In respect to any injury happening to any of his workmen during the period of such default in any payment required hereunder, the defaulting employer shall not, if such default be after demand for payment, be entitled to any of the benefits of this Act, but shall be liable to the injured workman (or the husband, wife, child or dependent of such workman in case death result from the injury) as he would have been prior to the passage of this Act.

Employer in default—Rights of employes.—In case the recovery actually collected from the employer shall equal or exceed the compensation to which the claimant would be entitled under this Act, the claimant shall be entitled to nothing out of the Accident Fund; if such amount shall be less than the compensation herein provided, the Accident Fund shall contribute such deficiency. The person entitled to claim under this section shall have the choice to be exercised before commencing suit against such defaulting employer, or proceeding by suit against such employer or of taking under this Act. If such person shall elect to take under this Act, the cause of action shall be assigned to the Commission for the benefit of the Accident Fund. In any suit brought upon such cause of action the defenses withdrawn by Section 15 hereof from employers electing not to contribute hereunder shall be inadmissible. Any such cause of action assigned to the Commission may be prosecuted or compromised by it in its discretion. Any compromise by an individual claimant under this section which would result in a deficiency to be made good out of the Accident Fund may be made only upon the written approval of the Commission.

§ 25. Injury through failure to observe safety appliance statutes.—It shall be the duty of the Industrial Accident Commission to investigate all cases where they have reason to believe that employers in this State have failed to install or maintain any safety appliance, device or safeguard required by statute and in all cases of failure on the part of any employer to comply with such safety statute to report the fact to the prosecuting attorney for the district in which such violation of law occurred and request the prosecution of the offending employer.

§ 26. Compensation may not be assigned or attached.—No moneys payable on account of injuries or death hereunder shall be subject to assignment prior to the receipt thereof by the beneficiary entitled thereto, nor shall the same pass by operation of law. All moneys paid or payable hereunder and the right to receive the same shall be exempt from seizure on execution, attachment or garnishment, or by the process of any court.

§ 27. (a) To obtain compensation.—Where a workman is entitled to compensation under this Act he shall file with the Commission his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this Act, and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the Commission, without charge to the workman.

(b) Proofs of death and relationship.—Where death results from injury, the parties entitled to compensation under this Act, or some one in their behalf, shall make application for the same to the Commission, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this Act, certificates of attending physician, if any, and such other proof as required by the rules of the Commission.

(c) Rearrangement of compensation.—If change of circumstances warrant an increase or rearrangement of compensation, like application shall be made therefor. No increase or rearrangement shall be operative for any period prior to application therefor.

(d) Must file claim within one year.—No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the right accrued.

§ 28. Medical examination.—Any workman entitled to receive compensation under this Act is required, if requested by the Commission, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman and as may be provided by the rules of the Commission. If the workman refuses to submit to any such examination, or obstructs the same, his rights to monthly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

§ 29. Employers' reports of accidents.—Whenever any accident occurs to any workman it shall be the duty of the employer to at once report such accident and the injury resulting therefrom to the Commission, and also to any local representative of the Commission. Such report shall state:

1. The time, cause and nature of the accident and injuries, and the probable duration of the injury resulting therefrom.

2. Whether the accident arose out of or in the course of the injured person's employment.

3. Any other matters the rules and regulations of the Commission may prescribe.

§ 30. Books and payrolls open to inspection—Refusal—Penalty.—The books, records and payrolls of the employer pertinent to the administration of this Act shall always be open to inspection by the Commission or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the payroll, the men employed, and such other information as may be necessary for the Commission and its management under this Act. Refusal on the part of the employer to report accidents or to submit said books, records and payroll for such inspection to any member of the Commission, or to any assistant presenting written authority from the Commission, shall subject the offending employer to a penalty of one hundred dollars (\$100) for each offense, to be collected by civil action in the name of the State and paid into the Accident Fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor.

§ 31. Other industries may come under the Act.—Any employer engaged in any occupation other than those defined in Section 13 hereof may make written application to the Commission to fix a rate of contribution for such occupation and thereupon it shall be the duty of the Commission to fix such rate which shall be based on the hazard of such occupation in relation to the hazards of the occupations for which rates are prescribed by Section 19 hereof. When such rate shall be so fixed such employer may give thirty days' notice in writing to the Commission of his election to contribute under this Act and shall at the same time display in a conspicuous manner about his works and in a sufficient number of places reasonably to inform his workmen of the fact, printed notices stating that he has elected to contribute to the fund and stating when his election will become effective. Any workman in the employ of such an employer shall be entitled at any time within ten days of the date when the election of his employer will become effective to give a written notice to such employer of his election not to become subject to this Act. At the expiration of the time fixed by the notice of such employer the employer and such of his workmen as shall not have given such written notice of their election to the contrary shall be subject to all of the provisions of this Act and entitled to all of the benefits thereof. Any employer becoming subject to this Act in the manner provided in this section shall pay the rate so fixed by the Commission and shall be entitled to a reduction of such rate in the manner provided by Section 19 hereof, and shall retain and pay to the Commission the proportion of his workmen's wages prescribed by Section 19 hereof.

§ 32. Right of appeal from Commission.—Any employer, workman, beneficiary, or person feeling aggrieved by any decision of the Commission affecting his interests under this Act may have the same reviewed by a proceeding in the nature of an appeal and initiated in the circuit court of the county in which the accident occurred, or in which he resides, and such appeal shall have precedence over all cases except criminal cases, and the court shall determine whether the Commission has justly considered all the facts concerning injury, whether it has exceeded the powers granted it by this Act, whether it has misconstrued the law and facts applicable in the case decided. If the court shall determine that the Commission has acted within its powers and has correctly construed the law and facts the decision of the

Commission shall be confirmed; otherwise, it shall be reversed or modified. Upon the hearing of such an appeal the court in its discretion may submit to a jury any question of fact involved in such an appeal. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal shall have been served by mail or personally upon some member of the Commission within thirty days following the rendition of the decision appealed from and actual communication thereof to the person affected thereby. No bond shall be required except that an appeal by the employer from a decision of the Commission under Section 25 shall be ineffectual unless within five days following the service of notice thereof a bond with surety satisfactory to the court shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay. If the decision of the Commission shall be reversed or modified the fees of the medical and other witnesses and the costs shall be paid out of the Industrial Accident Fund if the Industrial Accident Fund is affected by the litigation. In other respects the practice in civil cases shall apply. Appeal shall lie from the judgment of the circuit court as in other civil cases. The Attorney General shall be the legal adviser of the Commission and shall represent it in all proceedings whenever so required by any of the Commissioners. In all court proceedings under or pursuant to this Act the decision of the Commission shall be prima facie correct and the burden of proof shall be upon the party attacking same.

§ 33. Disbursements—Manner of funds to be invested.—Disbursement out of the funds shall be made only upon warrants drawn by the Secretary of State upon vouchers therefor transmitted to him by the Commission and audited by him. The State Treasurer shall, to such extent as shall appear to him to be advisable, keep the moneys of the unsegregated portion of the Accident Fund invested at interest in the class of securities authorized for the investment by banks of savings deposits under the laws of this State. The State Treasurer shall be liable on his official bond for the safe custody of the moneys and securities of the Accident Fund and the Segregated Accident Fund.

Section 34. Nothing in this Act shall be deemed to abrogate the rights of the employé under the present employers' liability law, in all cases where the employé, under this Act, is given the right to bring suit against his employer for an injury.

PENNSYLVANIA

WORKMEN'S COMPENSATION ACT OF 1915

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WORKMEN'S COMPENSATION ACT OF 1915

(Laws 1915, No. 338, p. 736.)

An Act defining the liability of an employer to pay damages for injuries received by an employé in the course of employment; establishing an elective schedule of compensation; and providing procedure for the determination of liability* and compensation thereunder.

ARTICLE I.—INTERPRETATION AND DEFINITION

§ 1. **Name and application of Act.**—Be it enacted, &c., That this act shall be called and cited as The Workmen's Compensation Act of 1915, and shall apply to all accidents occurring within this Commonwealth, irrespective of the place where the contract of hiring was made, renewed, or extended, and shall not apply to any accident occurring outside of the Commonwealth.

§ 102. **Number and gender.**—Wherever in this act the singular is used, the plural shall be included; where the masculine gender is used, the feminine and neuter shall be included.

§ 103. **"Employer" defined.**—The term "employer" as used in this act is declared to be synonymous with master, and to include natural persons, partnerships, joint-stock companies, corporations for profit, corporations not for profit, municipal corporations, the Commonwealth, and all governmental agencies created by it.

§ 104. **"Employé" defined.**—The term "employé" as used in this act is declared to be synonymous with servant, and includes all natural persons who perform services for another for a valuable consideration, exclusive of persons whose employment is casual in character and not in the regular course of the business of the employer, and exclusive of persons to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale, in the worker's own home, or on other premises not under the control or management of the employer.

§ 105. **"Contractor" defined.**—The term "contractor" as used in article two, section two hundred and three, and article three, section three hundred and two (b), shall not include a contractor engaged in an independent business, other than that of supplying laborers or assistants, in which he serves persons other than the employer in whose service the accident occurs, but shall include a sub-contractor to whom a principal contractor has sublet any part of the work which such principal contractor has undertaken.

§ 106. **Public authority.**—The exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this act, be treated as the trade or business of the authority.

§ 107. **"Bureau" and "Board."**—The term "Bureau" when used in this act shall mean the Bureau of Workmen's Compensation of the Department of Labor and Industry.

The term "Board" when used in this act shall mean the Workmen's Compensation Board of the Bureau.

ARTICLE II.—DAMAGES BY ACTION AT LAW

§ 201. **Abolition of defenses.**—That in any action brought to recover damages for personal injury to an employé in the course of his employment, or for death resulting from such injury, it shall not be a defense—

(a) That the injury was caused in whole or in part by the negligence of a fellow employé; or

(b) That the employé had assumed the risk of the injury; or

(c) That the injury was caused in any degree by the negligence of such employé, unless it be established that the injury was caused by such employé's intoxication or by his reckless indifference to danger. The burden of proving such intoxication or reckless indifference to danger shall be upon the defendant, and the question shall be one of fact to be determined by the jury.

§ 202. **Negligence of co-employés.**—The employer shall be liable for the negligence of all employés, while acting within the scope of their employment, including engineers, chauffeurs, miners, mine-foremen, fire-bosses, mine superintendents, plumbers, officers of vessels, and all other employés licensed by the State or other governmental authority, if the employer be allowed by law the right of free selection of such employés from the class of persons thus licensed; and such employés shall be the agents and representatives of their employers, and their employers shall be responsible for the acts and neglects of such employés, as in the case of other agents and employés of their employers; and, notwithstanding the employment of such employés, the property in and about which they are employed, and the use and operation thereof, shall at all times be under the supervision, management and control of their employers.

§ 203. **Assistant hired by employé—Premises of employer.**—An employer who permits the entry upon premises occupied by him or under his control, of a laborer or an assistant hired by an employé or contractor, for the performance upon such premises of a part of the employer's regular business entrusted to such employé or contractor, shall be liable to such laborer or assistant in the same manner and to the same extent as to his own employé.

§ 204. **Contracting out—Receipt of other benefits—Release.**—No agreement, composition, or release of damages made before the happening of any accident, except the agreement defined in article three of this act, shall be valid or shall bar a claim for damages for the injury resulting therefrom; and any such agreement, other than that defined in article three herein, is declared to be against the public policy of this Commonwealth. The receipt of benefits from any association, society, or fund shall not bar the recovery of damages by action at law, nor the recovery of compensation under article three hereof; and any release executed in consideration of such benefits shall be void.

ARTICLE III.—ELECTIVE COMPENSATION

§ 301. **Compensation without negligence—"Injury" includes.**—When employer and employé shall by agreement, either express or implied, as hereinafter provided, accept the provisions of article three of this act, compensation for personal injury to, or for the death of, such employé, by an accident,

in the course of his employment, shall be made in all cases by the employer, without regard to negligence, according to the schedule contained in sections three hundred and six and three hundred and seven of this article; provided that no compensation shall be made when the injury or death be intentionally self-inflicted, but the burden of proof of such fact shall be upon the employer.

The terms "injury" and "personal injury" as used in this act shall be construed to mean only violence to the physical structure of the body, and such disease or infection as naturally results therefrom; and wherever death is mentioned as a cause for compensation under this act, it shall mean only death resulting from such violence and its resultant effects, and occurring within three hundred weeks after the accident. The term "injury by an accident in the course of his employment," as used in this article, shall not include an injury caused by an act of a third person intended to injure the employé because of reasons personal to him, and not directed against him as an employé or because of his employment; but shall include all other injuries sustained while the employé is actually engaged in the furtherance of the business or affairs of the employer, whether upon the employer's premises or elsewhere, and shall include all injuries caused by the condition of the premises or by the operation of the employer's business or affairs thereon, sustained by the employé, who, though not so engaged, is injured upon the premises occupied by or under the control of the employer, or upon which the employer's business or affairs are being carried on, the employes' presence thereon being required by the nature of his employment.

§ 302. (a) **Conclusively presumed to accept.**—In every contract of hiring made after December thirty-first, one thousand nine hundred and fifteen, and in every contract of hiring renewed or extended by mutual consent, expressed or implied, after said date, it shall be conclusively presumed that the parties have accepted the provisions of article three of this act, and have agreed to be bound thereby, unless there be, at the time of the making, renewal, or extension of such contract, an express statement in writing, from either party to the other, that the provisions of article three of this act are not intended to apply, and unless a true copy of such written statement, accompanied by proof of service thereof upon the other party, setting forth under oath or affirmation the time, place, and manner of such service, be filed with the Bureau within ten days after such service and before any accident has occurred. Every contract of hiring, oral, written, or implied from circumstances, now in operation, or made or implied on or before December thirty-first, one thousand nine hundred and fifteen, shall be conclusively presumed to continue subject to the provisions of article three hereof, unless either party shall, on or before said date, in writing, have notified the other party to such contract that the provisions of article three hereof are not intended to apply, and unless there shall be filed with the Bureau a true copy of such notice, together with proof of service, within the time and in the manner hereinabove prescribed: Provided, however, That the provisions of this section shall not be so construed as to impair the obligation of any contract now in force. In the employment of minors, article three shall be presumed to apply, unless the said written notice be given by or to the parent or guardian of the minor. It shall not be lawful for any officer or agent of this Commonwealth, or for any county, city, borough, or township therein, or for any officer or agent thereof, or for any other governmental

authority created by the laws of this Commonwealth, to give such notice of rejection of the provisions of this article to any employé of the State or of such governmental agency.

(b) Notice of non-election.—After December thirty-first, one thousand nine hundred and fifteen, an employer who permits the entry, upon premises occupied by him or under his control, of a laborer or an assistant hired by an employé or contractor, for the performance upon such premises of a part of the employer's regular business entrusted to that employé or contractor, shall be conclusively presumed to have agreed to pay to such laborer or assistant compensation in accordance with the provisions of article three, unless the employer shall post in a conspicuous place, upon the premises where the laborer's or assistant's work is done, a notice of his intention not to pay such compensation, and unless there be filed with the Bureau, within ten days thereafter and before any accident has occurred, a true copy of such notice, together with proof of the posting of the same, setting forth upon oath or affirmation the time, place, and manner of such posting; and after December thirty-first, one thousand nine hundred and fifteen, any such laborer or assistant who shall enter upon premises occupied by or under the control of such employer, for the purpose of doing such work, shall be conclusively presumed to have agreed to accept the compensation provided in article three, in lieu of his right of action under article two, unless he shall have given notice in writing to the employer, at the time of entering upon such employer's premises for the purpose of doing his work, of his intention not to accept such compensation, and unless within ten days thereafter and before any accident has occurred there shall have been filed with the Bureau a true copy of such notice, accompanied by proof of service thereof upon such employer, setting forth under oath or affirmation the time, place, and manner of such service. And in such cases, where article three binds such employer and such laborer or assistant, it shall not be in effect between the intermediate employer or contractor and such laborer or assistant, unless otherwise expressly agreed.

§ 303. Surrender of other rights.—Such agreement shall constitute an acceptance of all the provisions of article three of this act, and shall operate as a surrender by the parties thereto of their rights to any form or amount of compensation or damages for any injury or death occurring in the course of the employment, or to any method of determination thereof, other than as provided in article three of this act. Such agreement shall bind the employer and his personal representatives, and the employé, his or her wife or husband, widow or widower, next of kin, and other dependents.

§ 304. Termination of agreement for operation or non-operation.—Any agreement between employer and employé for the operation or non-operation of the provisions of article three of this act may be terminated prior to any accident, by either party, upon sixty days' notice to the other in writing, if a copy of such notice, with proof of service, be filed in the Bureau, as provided in section three hundred and two of this article.

§ 305. Methods of insurance—Effect of failure to comply.—Every employer liable under this act to pay compensation shall insure the payment of compensation in the State Workmen's Insurance Fund, or in any insurance company, or mutual association or company, authorized to insure such liability in this Commonwealth, unless such employer shall be exempted

by the Bureau from such insurance. An employer desiring to be exempt from insuring the whole or any part of his liability for compensation shall make application to the Bureau, showing his financial ability to pay such compensation, whereupon the Bureau, if satisfied of the applicant's financial ability, shall by written order make such exemption. The Bureau may, from time to time, require further statements of the financial ability of such employer, and, if at any time such employer appear no longer able to pay compensation, shall revoke its order granting exemption; in which case the employer shall immediately subscribe to the State Fund, or insure his liability in a mutual association or company, as aforesaid.

If an employer shall fail to comply with the provisions of this section the Bureau shall, by registered mail, or in such other manner as the rules and regulations of the Bureau shall provide, serve upon such employer a notice to forthwith comply with such provisions; and if such employer does not, within thirty days thereafter, insure his liability as aforesaid, or satisfy the Bureau of his financial ability to pay compensation as aforesaid, or does not terminate his acceptance of article three of this act in the manner provided in section three hundred and four of the said article, such employer shall be liable for compensation under article three of this act to any employé injured thereafter, or to his personal representative, or for damages under article two of this act, at the option of such employé or his personal representatives: Provided, That such option be exercised by the employé and written notice given to the employer within thirty days after the accident: And provided further, That, until the expiration of the said thirty days from the giving of the notice by the Bureau, the employer shall be liable only for compensation under article three of this act, and that, if he shall terminate his acceptance under section three hundred and four of article three of this act, he shall be liable only for compensation under article three of this act until such termination of acceptance shall become effective.

§ 306. Schedule.—The following schedule of compensation is hereby established for injuries resulting in total disability:—

(a) Total disability.—For the first five hundred weeks after the fourteenth day of total disability, fifty per centum of the wages of the injured employé, as defined in section three hundred and nine; but the compensation shall not be more than ten dollars per week nor less than five dollars per week, and shall not exceed in aggregate the sum of four thousand dollars: Provided, That, if at the time of injury the employé receives wages of less than five dollars per week, then he shall receive the full amount of such wages per week as compensation. Nothing in this clause shall require the payment of compensation after disability shall cease. Should partial disability be followed by total disability, the period of five hundred weeks mentioned in this clause of this section shall be reduced by the number of weeks during which compensation was paid for such partial disability.

(b) Partial disability.—For disability partial in character (except the particular cases mentioned in clause (c)), fifty per centum of the difference between the wages of the injured employé, as defined in section three hundred and nine, and the earning power of the employé thereafter; but such compensation shall not be more than ten dollars per week. This compensation shall be paid during the period of such partial disability; not, however, beyond three hundred weeks after the fourteenth day of such total disability.

Should total disability be followed by partial disability, the period of three hundred weeks mentioned in this clause shall be reduced by the number of weeks during which compensation was paid for such total disability.

(c) Permanent loss of member.—For all disability resulting from permanent injuries of the following classes, the compensation shall be exclusively as follows:

For the loss of a hand, fifty per centum of wages during one hundred and seventy-five weeks.

For the loss of an arm, fifty per centum of wages during two hundred and fifteen weeks.

For the loss of a foot, fifty per centum of wages during one hundred and fifty weeks.

For the loss of a leg, fifty per centum of wages during two hundred and fifteen weeks.

For the loss of an eye, fifty per centum of wages during one hundred and twenty-five weeks.

For the loss of any two or more of such members, not constituting total disability, fifty per centum of wages during the aggregate of the periods specified for each.

Unless the Board shall otherwise determine, the loss of both hands or both arms, or both feet, or both legs, or both eyes, shall constitute total disability, to be compensated according to the provisions of clause (a).

Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm, and amputation at or above the knee shall be considered as the loss of a leg. Permanent loss of the use of a hand, arm, foot, leg, or eye shall be considered as the equivalent of the loss of such hand, arm, foot, leg, or eye.

This compensation shall not be more than ten dollars per week nor less than five dollars per week: Provided, That, if at the time of injury the employé receives wages of less than five dollars per week, then he shall receive the full amount of such wages per week as compensation.

(d) Waiting period.—No compensation shall be allowed for the first fourteen days after disability begins, except as hereinafter provided in clause (e) of this section.

(e) Medical, surgical and hospital expenses.—During the first fourteen days after disability begins the employer shall furnish reasonable surgical, medical, and hospital services, medicines and supplies, as and when needed, unless the employé refuses to allow them to be furnished by the employer. The cost of such services, medicines, and supplies shall not exceed twenty-five dollars, unless a major surgical operation shall be necessary; in which case the cost shall not exceed seventy-five dollars. If the employer shall, upon application made to him, refuse to furnish such services, medicines, and supplies, the employé may procure the same, and shall receive from the employer the reasonable cost thereof within the above limitations. If the employé shall refuse reasonable surgical, medical, and hospital services, medicines and supplies, tendered to him by his employer, he shall forfeit all right to compensation for any injury or any increase in his incapacity shown to have resulted from such refusal.

(f) **Reduction in case of death.**—Should the employé die as a result of the injury, the period during which compensation shall be payable to his dependents, under section three hundred and six of this article, shall be reduced by the period during which compensation was paid to him in his lifetime, under this section of this article. No reduction shall be made for the amount which may have been paid for medical and hospital services and medicines, nor for the expenses of the last sickness and burial. Should the employé die from some other cause than the injury, the liability for compensation shall cease.

§ 307. **Death benefits.—To whom payable.**—In case of death, compensation shall be computed on the following basis, and distributed to the following persons:—

1. To the child or children, if there be no widow nor widower entitled to compensation, twenty-five per centum of wages of deceased, with ten per centum additional for each child in excess of two, with a maximum of sixty per centum, to be paid to their guardian.

2. To the widow or widower, if there be no children, forty per centum of wages.

3. To the widow or widower, if there be one child, forty-five per centum of wages.

4. To the widow or widower, if there be two children, fifty per centum of wages.

5. To the widow or widower, if there be three children, fifty-five per centum of wages.

6. To the widow or widower, if there be four or more children, sixty per centum of wages.

7. If there be neither widow, widower, nor children, then to the father and mother, or the survivor of them, if dependent to any extent upon the employé for support at the time of his death, twenty per centum of wages.

8. If there be neither widow, widower, children, nor dependent parent, then to the brothers and sisters, if actually dependent to any extent upon the decedent for support at the time of his death, fifteen per centum of wages for one brother or sister, and five per centum additional for each additional brother or sister, with a maximum of twenty-five per centum; such compensation to be paid to their guardian.

9. Whether or not there be dependents, as aforesaid, the reasonable expenses of the last sickness and burial, not exceeding one hundred dollars (without deduction of any amounts theretofore paid for compensation or for medical expenses), payable to the dependents, or, if there be no dependents, then to the personal representatives of the deceased.

Compensation shall be payable under this section to or on account of any child, brother, or sister, only if and while such child, brother, and sister is under the age of sixteen. No compensation shall be payable under this section to a widow, unless she was living with her deceased husband at the time of his death, or was then actually dependent upon him for support. No compensation shall be payable under this section to a widower, unless he be incapable of self-support at the time of his wife's death and be at such time dependent upon her for support. The terms "child" and "children" shall include step-children and adopted children, and children to whom he stood in loco parentis, if members of decedent's household at the time of his death,

and shall include posthumous children. Should any dependent of a deceased employé die, or should the widow or widower remarry, or should the widower become capable of self-support, the right of such dependent, or such widow or widower, to compensation under this section, shall cease. If the compensation payable under this section to any person shall, for any cause, cease, the compensation to the remaining persons entitled thereunder shall thereafter be the same as would have been payable to them had they been the only persons entitled to compensation at the time of the death of the deceased.

The wages upon which death compensation shall be based shall not, in any case, be taken to exceed twenty dollars per week, nor be less than ten dollars per week.

The compensation shall be paid during three hundred weeks, and, in the case of children entitled to compensation under this section, the compensation of each child shall continue after said period of three hundred weeks until such child reach the age of sixteen, at the rate of fifteen per centum of wages, if there be but one child, with ten per centum additional for each additional child, with a maximum of fifty per centum.

§ 308. Payments—Time.—Except as hereinafter provided, all compensation payable under this article shall be payable in periodical instalments, as the wages of the employé were payable before the accident.

§ 309. Wages.—Wherever in this article the term "wages" is used, it shall be construed to mean the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, and shall not include gratuities received from the employer or others; nor shall it include board, lodging or similar advantages received from the employer, unless the money value of such advantages shall have been fixed by the parties at the time of hiring; nor shall it include amounts deducted by the employer, under the contract of hiring, for labor, material, supplies, tools, or other things furnished or paid for by the employer, and necessary for the performance of such contract by the employé. In occupations involving seasonal employment or employment dependent upon the weather, the employé's weekly wages shall be taken to be one-fiftieth of the total wages which he has earned from all occupations during the year immediately preceding the accident, unless it be shown that during such year, by reason of exceptional causes, such method of computation does not ascertain fairly the earnings of the employé; in which case the period for calculation shall be extended so far as to give a basis for the fair ascertainment of his average weekly earnings. In continuous employments, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the employé, his weekly wages shall be taken to be five and one-half times his average earnings at such rate for a working day of ordinary length, excluding earnings from overtime, and using as a basis of calculation his earnings during so much of the preceding six months as he worked for the same employer. Where the employé is working under concurrent contracts with two or more employers, his wages from all employers shall be considered as if earned from the employer liable for compensation.

§ 310. Alien dependents—Commutation—Representation by consular officers.—Compensation under this article to alien dependent widows and children, not residents of the United States, shall be two-thirds of the amount provided in each case for residents; and the employer may, at any time, com-

mute all future instalments of compensation payable to alien dependents, not residents of the United States, by paying to such alien dependents the then value thereof, calculated in accordance with the provisions of section three hundred and sixteen of this article. Alien widowers, parents, brothers, and sisters, not residents of the United States, shall not be entitled to any compensation.

Non-resident alien dependents may be officially represented by the Consular officers of the nation of which such alien or aliens may be citizens or subjects, and in such cases the Consular officers shall have the right to receive, for distribution to such non-resident alien dependents, all compensation awarded hereunder, and the receipt of such Consular officers shall be a full discharge of all sums paid to and received by them.

§ 311. **Notice of accident.**—Unless the employer shall have actual knowledge of the occurrence of the injury, or unless the employé or some one in his behalf, or some of the dependents or some one in their behalf, shall give notice thereof to the employer within fourteen days after the accident, no compensation shall be due until such notice be given or knowledge obtained; but if the employé or other beneficiary shall show that his delay in giving notice was due to his mistake or ignorance of fact or of law, or to his physical or mental inability, or to fraud, misrepresentation or deceit, or to any other reasonable cause or excuse, then compensation shall be allowed, unless the employer shall show that he did not know, and by reasonable diligence could not have learned, of the accident, and that he was prejudiced by the delay; in which case he shall be relieved to the extent of such prejudice.

§ 312. **Form of notice—Variations.**—The notice referred to in section three hundred and eleven hereof shall be substantially in the following form:

To (Name of Employer):

You are hereby notified that an injury of the following character: _____ was suffered by (name of employé injured), who was in your employment at (place), while engaged as (kind of employment) on or about the _____ day of _____, Anno Domini _____, and that compensation will be claimed therefor.

Date: _____.

Signed _____.

But no variation from this form shall be material if the notice be sufficient to inform the employer that a certain employé, by name, received an injury, the character of which is described in ordinary language, in the course of his employment on or about a time specified and at or near a place specified.

§ 313. **Service of notice.**—The notices referred to in section three hundred and two and section three hundred and eleven hereof may be served personally upon the employer, or upon the manager or superintendent in charge of the works or business in which the accident occurred, or by sending them through the registered mail to the employer at his or its last known residence or place of business, or, if the employer be a corporation either foreign or domestic, then upon the president, vice-president, secretary, or treasurer thereof. Knowledge of the occurrence of the injury on the part of any of said agents shall be the knowledge of the employer.

§ 314. **Medical examination.**—At any time after an injury the employé, if so requested by his employer, must submit himself for examination, at some reasonable time and place, to a physician or physicians legally authorized to practice under the laws of such place, who shall be selected and paid by the

employer. If the employé shall refuse, upon the request of the employer, to submit to the examination by the physician or physicians selected by the employer, the Board may, upon petition of the employer, order the employé to submit to an examination at a time and place set by it, and by the physician or physicians selected and paid by the employer, or by a physician or physicians designated by it and paid by the employer; and if the employé shall, without reasonable cause or excuse, disobey or disregard such order, he shall be deprived of his right to compensation under this article. The Board may at any time after such first examination, upon petition of the employer, order the employé to submit himself to such further examinations as it shall deem reasonable and necessary, at such times and places and by such physicians as it may designate; and, in such case, the employer shall pay the fees and expenses of the examining physician or physicians, and the reasonable traveling expenses and loss of wages incurred by the employé in order to submit himself to such examination. The refusal or neglect, without reasonable cause or excuse, of the employé to submit to such examination ordered by the Board, either before or after an agreement or award, shall deprive him of the right to compensation, under this article, during the continuance of such refusal or neglect, and the period of such neglect or refusal shall be deducted from the period during which compensation would otherwise be payable.

The employé shall be entitled to have a physician or physicians of his own selection, to be paid by him, participate in any examination requested by his employer or ordered by the Board.

§ 315. Limitations.—In cases of personal injury all claims for compensation shall be forever barred, unless, within one year after the accident, the parties shall have agreed upon the compensation payable under this article; or unless, within one year after the accident, one of the parties shall have filed a petition as provided in article four hereof. In cases of death all claims for compensation shall be forever barred, unless, within one year after the death, the parties shall have agreed upon the compensation under this article; or unless, within one year after the death, one of the parties shall have filed a petition as provided in article four hereof. Where, however, payments of compensation have been made in any case, said limitations shall not take effect until the expiration of one year from the time of the making of the last payment.

§ 316. Commutation to lump sum.—The compensation contemplated by this article may at any time be commuted by the Board, at its then value when discounted at five per centum interest, with annual rests, disregarding the probability of the beneficiary's death, upon application of either party, with due notice to the other, if it appear that such commutation will be for the best interest of the employé or the dependents of the deceased employé, and that it will avoid undue expense or undue hardship to either party, or that such employé or dependent has removed or is about to remove from the United States, or that the employer has sold or otherwise disposed of the whole or the greater part of his business or assets. Except as provided in section three hundred and ten hereof, and in this section, no commutation of compensation shall be made.

§ 317. Payment to trustee.—At any time after the approval of an agreement or after the entry of the award, a sum equal to all future instalments of compensation may (where death or the nature of the injury renders the amount of future payments certain), with the approval of the Bureau, be paid

by the employer to any savings bank, trust company, or life insurance company, in good standing and authorized to do business in this State, and such sum, together with all interest thereon, shall thereafter be held in trust for the employé or the dependents of the employé, who shall have no further recourse against the employer. The payment of such sum by the employer, evidenced by the receipt of the trustee noted upon the prothonotary's docket, shall operate as a satisfaction of said award as to the employer. Payments from said fund shall be made by the trustee, in the same amounts and at the same periods, as are herein required of the employer, until said fund and interest shall be exhausted. In the appointment of the trustee preference shall be given, in the discretion of the court, to the choice of the employé or the dependents of the deceased employé. Should, however, there remain any unexpended balance of any fund after the payment of all sums due under this act, such balance shall be repaid to the employer who made the original payment, or to his legal representatives.

§ 318. Preference of compensation claims—Non-assignability.—The right of compensation granted by this article of this act shall have the same preference (without limit of amount) against the assets of an employer, liable for such compensation, as is now or may hereafter be allowed by law for a claim for unpaid wages for labor: Provided, however, That no claim for compensation shall have priority over any judgment, mortgage, or conveyance of land recorded prior to the filing of the petition, award, or agreement as to compensation in the office of the prothonotary of the county in which the land is situated. Claims for payments due under this article of this act shall not be assignable, and (except as provided in section five hundred and one of article five hereof) shall be exempt from all claims of creditors, and from levy, execution, or attachment, which exemption may not be waived.

§ 319. Third party liability—Subrogation of employer.—Where a third person is liable to the employé or the dependents for the injury or death, the employer shall be subrogated to the right of the employé or the dependents against such third person, but only to the extent of the compensation payable under this article by the employer. Any recovery against such third person in excess of the compensation theretofore paid by the employer shall be paid forthwith to the employé or to the dependents, and shall be treated as an advance payment by the employer on account of any future instalments of compensation.

ARTICLE IV.—PROCEDURE

§ 401. Definitions.—The term "Referee" when used in this article shall mean Workmen's Compensation Referee.

The term "Fund" when used in this article shall mean the State Insurance Fund of this Commonwealth.

The term "employer" when used in this article shall mean the employer as defined in article one of this act, or his duly authorized agent, or his insurer if such insurer has assumed the employer's liability, or the fund if the employer be insured therein.

§ 402. Petitions.—All proceedings before the Board or any referee, and all appeals to the Board, shall be instituted by petition addressed to the Board. All petitions shall be in writing and in the form prescribed by the Board.

§ 403. **Delivery to Board.**—All petitions, all copies of agreements for compensation, and all other papers requiring action by the Board, shall be mailed or delivered to the Bureau at its principal office.

§ 404. **Docket.**—The Bureau shall, immediately upon their receipt, properly file and docket all petitions, agreements for compensation, findings of fact by the Board or any referee, awards or disallowances of compensation, or modifications thereof, and all other reports or papers filed with it under the provisions of this act or the rules and regulations of the Board.

§ 405. **Copies from Bureau to Board.**—The Bureau shall, by mail or in such other manner as the Board shall direct, transmit to the Board or the proper referee true copies of all petitions, agreements, or other papers requiring action by the Board or a referee.

§ 406. **Daily transmittal of decisions of Board.**—At the close of each day the Board and all referees shall, in such manner as the rules of the Board shall prescribe, transmit to the Bureau all findings of fact, awards or disallowances of compensation, or modifications thereof, or other decisions or reports rendered during the day.

§ 407. **Service on parties.**—Immediately upon receiving from the Board or any referee any approval or disapproval of any agreement for, or any award or disallowance of, compensation, or any modification thereof, or any other decision, the Bureau shall serve a certified copy thereof on all parties in interest.

§ 408. **Same—By mail.**—All notices and certified copies to which any party shall be entitled under the provisions of this article shall be served by mail, or in such other manner as the Board shall direct. For the purposes of this article any notice or certified copy shall be deemed served on the date when mailed, properly stamped and addressed, and shall be presumed to have reached the party to be served; but any party may show by competent evidence that any notice or certified copy was not received, or that there was unusual or unreasonable delay in its transmission through the mails. In any such case proper allowance shall be made for the party's failure within the prescribed time to assert any right given him by this act.

The Bureau, the Board, and every referee shall keep a careful record of the date of mailing every notice and certified copy required by this act to be served on the parties in interest.

§ 409. **Findings of fact conclusive.**—A referee's findings of fact shall be final, unless the Board shall allow an appeal therefrom as hereinafter provided. The Board's findings of fact shall in all cases be final.

From the referee's decision on any question of law an appeal may be taken to the Board, and from any decision of the Board on a question of law an appeal may be taken to the courts as hereinafter provided.

§ 410. **Agreements for compensation.**—On or after the fourteenth day after any accident shall have occurred, the employer and the employé or his dependent may agree upon the compensation payable to the employé or his dependent under this act; but any agreement made prior to the fourteenth day after the accident shall have occurred, or permitting a commutation of payments contrary to the provisions of this act, or varying the amount to be paid or the period during which compensation shall be payable as provided in this act, shall be wholly null and void.

All agreements made in accordance with the provisions of this section shall be in writing, and signed by all parties in interest.

§ 411. Same—Approval by Board.—Whenever an agreement shall be executed between an employer and an employé or his dependent as provided by this act, a certified copy of the same signed by all parties in interest shall be mailed or delivered to the Board. It shall be the duty of the Board to examine the agreement, and to determine whether it conforms to the provisions of section four hundred and ten, and, within thirty days after the copy of the agreement has been mailed or delivered to it, to notify the parties thereto of its validity or invalidity under the aforesaid section: Provided, however, That any payment made in accordance with any agreement prior to the receipt of notice of invalidity shall discharge pro tanto the liability, under article three of this act, of the employer making such payments.

§ 412. Claim in case of disagreement.—If, after any accident, the employer and the employé or his dependent, concerned in any accident, shall fail to agree upon the facts thereof and the compensation due under this act, the employé or his dependent may present a claim for compensation to the Board.

§ 413. Reference to referee.—Whenever a claim-petition shall be presented to the Board, the Bureau shall promptly assign it to a referee for hearing and determination. The Bureau shall forthwith notify such referee that the petition has been assigned to him, and shall serve upon each adverse party in interest a certified copy of the petition, and a notice that, unless an answer shall within seven days be filed with the referee to whom the petition has been assigned (giving his name and address), the allegations of the petition shall be deemed admitted.

§ 414. Answer.—Within seven days after a certified copy of the petition and a notice as herein required shall have been served upon any adverse party, he may file with the referee designated in the notice an answer in the form prescribed by the rules and regulations of the Board.

§ 415. Hearing—Notice to parties—Time and place.—Seven days after notice of a claim-petition shall have been served upon the adverse parties thereto, the referee shall fix a time and place for hearing the claim, and shall notify all the parties in interest. The time of hearing shall be not less than twelve days nor more than twenty-one days after notice of the filing of the petition shall have been mailed or delivered to all adverse parties thereto. Together with the notice, of the time and place of hearing, a copy of any answer filed by any adverse party shall be mailed or delivered to the petitioner or petitioners.

Whenever all adverse parties in interest have concurred in the answer, all facts not denied therein shall be deemed admitted, and no testimony shall be required from the petitioner or petitioners, or heard on behalf of the adverse parties, upon any fact not controverted in such answer.

§ 416. Hearing and evidence before referee.—The referee designated by the Bureau, or such other referee as the Board shall substitute for him, shall hear evidence relating to the claim at the time and place stated in the notice to the parties.

§ 417. Investigation by referee.—The referee, if he shall deem it necessary, shall, either before or after any hearing, make an investigation of the facts set forth in the petition, or cause the same to be made. With the consent of the Board he may appoint one or more impartial physicians or surgeons to examine the injuries of the plaintiff and report thereon, or he

may employ the services of such other experts as shall appear necessary to ascertain the facts. The Board shall fix the compensation of such physicians, surgeons, and experts, and the referee shall tax the same as a part of the cost of the proceedings, to be paid by either party, or both, as the Board may direct. The report of any physician, surgeon, or expert appointed by the referee shall be filed with him, and shall be a part of the record and open to inspection by any party to the same.

§ 418. Finding and award.—Within seven days after the conclusion of any hearing the referee shall, in writing, state his findings of fact, his award or disallowance of compensation in accordance with the provisions of this act, and such other matters as the rules of the Board shall require.

§ 419. Appeal to Board—Grounds.—Any party in interest may, within ten days after notice of a referee's award or disallowance of compensation shall have been served on him, take an appeal to the Board on the ground: (1) That the award or disallowance of compensation is not in conformity with the terms of this act, or that the referee committed any other error of law; or (2) that the findings of fact and award or disallowance of compensation was unwarranted by the evidence; or because of fraud, coercion, or other improper conduct by any party in interest.

§ 420. Hearing on error of law.—Whenever an appeal shall be based upon an alleged error of law, it shall be the duty of the Board to grant a hearing thereon. The Board shall fix a time and place for such hearing, and shall serve notice thereof on all parties in interest.

As soon as may be after any such hearing, the Board shall either sustain or reverse the referee's award or disallowance of compensation, or make such modification thereof as it shall deem proper.

§ 421. Hearing on sufficiency of evidence.—Whenever an appeal shall be taken on the ground that the referee's award or disallowance of compensation was unwarranted by the evidence, or because of fraud, coercion, or other improper conduct by any party in interest, the Board may, in its discretion, grant a hearing de novo or sustain the referee's award or disallowance of compensation. If the Board shall grant a hearing de novo, it shall fix a time and place for the same and shall notify all parties in interest.

The Board shall at all times have the power to make any investigation which it shall deem necessary to ascertain the facts. It may employ physicians, surgeons, or other experts to aid in its investigation; and shall in all cases fix the compensation of such physicians, surgeons, or experts, and tax the same as a part of the costs of the proceedings, to be paid by either party, or both, as the Board may direct.

As soon as may be after any hearing de novo by the Board, it shall in writing state its findings of fact, and award or disallow compensation in accordance with the provisions of this act.

§ 422. Agreed statement of facts.—Whenever the employer and the employé or his dependent shall, on or after the fourteenth day after any accident, agree on the facts on which a claim for compensation depends, but shall fail to agree on the compensation payable thereunder, they may by petition request the Board to determine the compensation payable. Such petition shall contain the agreed facts and shall be signed by all parties in interest. The Board shall fix a time and place for hearing the petition, and shall notify all parties in interest. As soon as may be after such hear-

ing, the Board shall award or disallow compensation in accordance with the provisions of this act.

§ 423. Review of agreements by Board.—All agreements for compensation shall be subject to review by the Board at any time, upon presentation of a petition alleging fraud, mistake, coercion, or other proper cause. The Board shall fix a time and place for hearing the petition, and shall notify all parties in interest.

As soon as may be after such hearing, the Board shall either ratify or disapprove the agreement.

§ 424. Hearing on commutation.—If any party shall desire the commutation of future instalments of compensation, he shall present a petition therefor to the Board. The Board shall appoint a time and place for hearing the petition, and shall notify all parties in interest.

Every such petition shall be heard by the Board, but the Board may refer any question of fact arising out of such petition to a referee, whose findings shall be final, unless upon petition the Board shall, for cause shown, grant a hearing on the facts.

The Board shall fix a time and place for the hearing, and shall notify all parties in interest.

§ 425. Appeal to court of common pleas.—If any party in interest shall desire to appeal from the decision of the Board on matters of law, he shall, within ten days after notice of its decision shall have been served on him, file a notice of appeal with the prothonotary of the court of common pleas of the county in which the accident occurred, or of the county in which the adverse party resides or has a permanent place of business, or, by agreement of the parties, to the court of common pleas of any other county. In such case it shall be the duty of the Bureau, within ten days, to prepare and mail or deliver to the prothonotary of the proper county a transcript of the agreement or finding of fact and award or disallowance of compensation, or modification thereof, involved in the appeal.

Any appeal from a decision of the Board to the courts of common pleas, and from them to the Supreme or Superior Court, shall take precedence over all other civil cases.

§ 426. Modification or termination of award.—Any agreement or award of compensation may be modified or terminated at any time by a subsequent agreement approved by the Board, and may be modified or terminated by the Board or a referee designated by the Board, on the petition of either party, on the ground that the incapacity of the injured employé has subsequently increased, decreased, or terminated, or that the status of any dependent has changed. In such case the procedure shall be the same as that provided in the case of an original agreement or petition.

§ 427. Hearings to be public.—All hearings before the Board or before a referee shall be public.

§ 428. Technical rules do not apply.—Neither the Board nor any referee shall be bound by the technical rules of evidence in conducting any hearing or investigation.

§ 429. Judgment and execution.—Wherever, after an accident, any employé or his dependents shall have entered into a compensation agreement with his employer, or shall file a claim-petition with the Board, he may file a certified copy thereof with the prothonotary of the court of common pleas of any county. The prothonotary shall enter the amount stipulated in any

such agreement or claimed in any such petition as a judgment against the employer. If the agreement be approved by the Board, or compensation awarded as claimed in the petition, the amount of compensation stipulated in the agreement or claimed in the petition shall be a lien, as of the date when the agreement or petition was filed with the prothonotary. Pending the approval of the agreement or the award of compensation, no other lien which may be attached to the employer's property during such time shall gain priority over the lien of such agreement or award; but no execution shall issue on any compensation judgment before the approval of the agreement or the award of compensation on the said petition.

If the agreement be disapproved, or, after hearing, compensation shall be disallowed, the employer may file with the prothonotary of any county in which the petition or agreement is on record as a judgment, a certified copy of the disapproval of the agreement or disallowance of compensation, and it shall be the duty of such prothonotary to strike off the judgment.

If the amount of compensation claimed be disallowed, but another amount awarded, the compensation judgment shall be a lien to the extent of the award, as of the date of filing the petition with the prothonotary, with the same effect as to other liens and the same disability to issue execution thereon as if the compensation claimed had been allowed. In such cases the prothonotary shall make such modification of the record as shall be appropriate.

If, after approval of the agreement or award, the agreement or award be subsequently modified, either party may file with the prothonotary a certified copy of the modified award or agreement, and it shall be the duty of the prothonotary to make such modification of the record as shall be appropriate, and the lien of the judgment shall be modified accordingly.

§ 430. Receipts for payment—Satisfaction of judgment.—If any party against whom a compensation agreement or award is on record in any county of this Commonwealth shall, at any time, present to the Board receipts or copies thereof, certified by any referee, showing the payment of compensation as required by the agreement or award in full, to the date of presentation to the referee, the Board shall issue a certificate to such party in the form prescribed, stating the extent to which the judgment of the agreement or award has been reduced. Upon presentation of such certificate to the prothonotary of any county in which the agreement or award is on record, it shall be the prothonotary's duty to mark the judgment satisfied to the extent of the payments so certified.

§ 431. Compensation not stayed by appeal—Exception by bond.—The lien of any judgment entered upon any award shall not be divested by any appeal. If, however, the party appealing from the award shall file with the Board a bond, in such amount and in such form as the rules and regulations of the Board shall direct, the appeal shall, pending its decision, excuse the payment of so much of the compensation as is contested therein; but if the final decision on appeal shall sustain the award, it shall be the duty of the employer by whom such award is payable to make payments of compensation as from the date of the original award. If on appeal the award is sustained as to a part, it shall be the duty of the employer by whom such part is payable to make payments as from the date of the original award. In case the award is annulled on appeal, it shall be the duty of the

prothonotary of any county in which such award has been entered as a judgment to mark it satisfied.

§ 432. **Costs.**—The cost of the prothonotary for entering the amount of compensation as provided in this act, or making a modification of the record, or marking the judgment satisfied, shall be allowed, taxed, and collected as upon a confession of judgment.

§ 433. **Report of appeals to Board monthly.**—It shall be the duty of the prothonotary of each court of common pleas, and of the Supreme and Superior Courts of the Commonwealth, to make a monthly report to the Board of the disposition of all appeals taken to such court under the provisions of this article.

ARTICLE V.—GENERAL PROVISIONS

§ 501. **Legal services and disbursements lien—Approval.**—No claim or agreement for legal services or disbursements in support of any demand made or suit brought under the provisions of article two of this act shall be an enforceable lien against the amount to be paid as damages, or be valid or binding in any other respect, unless the same be approved in writing by the judge presiding at the trial, or, in case of settlement without trial, by a judge of the common pleas court of the county in which the accident occurred.

No claim or agreement for legal services or disbursements in support of any claim for compensation, or in preparing any agreement for compensation, under article three of this act, shall be an enforceable lien against the amount to be paid as compensation, or be valid or binding in any other respect, unless the same be approved by the Board. Any such claim or agreement shall be filed with the Bureau, which shall, as soon as may be, notify the person by whom the same was filed of the Board's approval or disapproval thereof, as the case may be.

After the approval as herein required, if the employer be notified in writing of such claim or agreement for legal services and disbursements, the same shall be a lien against any amount thereafter to be paid as damages or compensation: Provided, however, That where the employé's compensation is payable by the employer in periodical instalments, the Board shall fix, at the time of approval, the proportion of each instalment to be paid on account of legal services and disbursements.

§ 502. **Effect of part unconstitutional.**—If any provision of this act shall be held by any court to be unconstitutional, such judgment shall not affect any other section or provision of this act, except that articles two and three are hereby declared to be inseparable and as one legislative thought; and if either article be declared by such court void or inoperative in an essential part, so that the whole of such article must fall, the other article shall fall with it and not stand alone.

§ 503. **Not retroactive.**—Nothing in this act shall affect or impair any right of action which shall have accrued before this act shall take effect.

§ 504. **Repealing clause.**—All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 505. **When effective.**—This act shall not apply in the case of an accident occurring prior to the first day of January next succeeding its passage and approval.

Approved the 2d day of June, A. D. 1915.

SUPPLEMENT

(Laws 1915, No. 343, p. 777.)

A Supplement to an act, entitled "The Workmen's Compensation Act of 1915," to exempt domestic servants and agricultural workers from the provisions thereof.

§ 1. Exemption of domestic servants and agricultural workers.—Be it enacted, &c., That nothing contained in any article or any section of an act, entitled the Workmen's Compensation Act of 1915, shall apply to or in any way affect any person who, at the time of injury, is engaged in domestic service or agriculture.

Approved the 3d day of June, A. D. 1915.

RHODE ISLAND

WORKMEN'S COMPENSATION ACT

Section

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WORKMEN'S COMPENSATION ACT

(Pub. Laws 1912, c. 831, Amended by Pub. Laws 1913, cc. 936, 937, and Pub. Laws 1915, c. 1263.)

An Act relative to payments to employees for personal injuries received in the course of their employment, and to the prevention of such injuries.

It is enacted by the General Assembly as follows:

ARTICLE I.—ABROGATION OF REMEDIES AND DEFENSES

§ 1. **Abrogation of defenses.**—In an action to recover damages for personal injury sustained by accident by an employee arising out of and in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense : (a) That the employee was negligent ; (b) That the injury was caused by the negligence of a fellow employee ; (c) That the employee has assumed the risk of the injury.

§ 2. **Excepted employés.**—The provisions of this act shall not apply to actions to recover damages for personal injuries, or for death resulting from personal injuries, sustained by employees engaged in domestic service or agriculture.

§ 3. **Employers of less than five.**—The provisions of this act shall not apply to employers who employ five or less workmen or operatives regularly in the same business, but such employers may, by complying with the provisions of Section 5 of this article become subject to the provisions of this act.

§ 4. **Application of § 1.**—The provisions of Section 1 of this article shall not apply to actions to recover damages for personal injuries, or for death resulting from personal injuries, sustained by employees of an employer who has elected to become subject to the provisions of this act, as provided in Section 5 of this article.

§ 5. **Election of employer—Continuance.**—Such election on the part of the employer shall be made by filing with the commissioner of industrial statistics a written statement to the effect that he accepts the provisions of this act, and by giving reasonable notice of such election to his workmen, by posting and keeping continuously posted copies of such statement in conspicuous places about the place where his workmen are employed, the filing of which statement and the giving of which notice shall operate to subject such employer to the provisions of this act and all acts amendatory thereof for the term of one year from the date of the filing of such statement, and thereafter, without further act on his part, for successive terms of one year, each, unless such employer shall, at least sixty days prior to the expiration of such first or any succeeding year, file with said commissioner a notice in writing to the effect that he desires to withdraw his election to be subject to the provisions of this act and shall give reasonable notice to his workmen as above provided. Blank forms of election and withdrawal as herein provided, shall be furnished by said commissioner.

§ 6. **Presumption of employé's acceptance—Waiver of common law rights—Minor employés.**—An employee of an employer who shall have elected to become subject to the provisions of this act as provided in Section 5 of this article shall be held to have waived his right of action at common law to recover damages for personal injuries, if he shall not have given his em-

ployer at the time of his contract of hire notice in writing that he claimed such right, and within ten days thereafter have filed a copy thereof with the commissioner of industrial statistics, or, if the contract of hire was made before the employer so elected, if the employee shall not have given the said notice and filed the same with said commissioner within ten days after notice by the employer, as above provided, of such election; and such waiver shall continue in force for the term of one year, and thereafter without further act on his part, for successive terms of one year, each, unless such employee shall at least sixty days prior to the expiration of such first or any succeeding year, file with the said commissioner a notice in writing to the effect that he desires to claim his said right of action at common law and within ten days thereafter shall give notice thereof to his employer. A minor working at an age legally permitted under the laws of this state shall be deemed *sui juris* for the purpose of this act and no other person shall have any cause of action or right to compensation for an injury to such minor employee except as expressly provided in this act; but if said minor shall have a parent living or a guardian, such parent or guardian, as the case may be, may give the notice and file a copy of the same as herein provided by this section, and such notice shall bind the minor in the same manner that adult employees are bound under the provisions of this act. In case no such notice is given, such minor shall be held to have waived his right of action at common law to recover damages for personal injuries. Any employee, or the parent or guardian of any minor employee, who has given notice to the employer that he claimed his right of action at common law may waive such claim by a notice in writing which shall take effect five days after the delivery to the employer or his agent.

§ 7. **Exclusive remedy.**—The right to compensation for an injury, and the remedy therefor granted by this act, shall be in lieu of all rights and remedies as to such injury now existing either at common law or otherwise; and such rights and remedies shall not accrue to employees entitled to compensation under this act while it is in effect.

ARTICLE II.—PAYMENTS

§ 1. **Compensation provided.**—If an employee who has not given notice of his claim of common law rights of action or who has given such notice and has waived the same, as provided in Section 6 of Article I, receives a personal injury by accident arising out of and in the course of his employment, he shall be paid compensation, as hereinafter provided, by the employer who shall have elected to become subject to the provisions of this act.

§ 2. **Intentional injury or intoxication.**—No compensation shall be allowed for the injury or death of an employee where it is proved that his injury or death was occasioned by his wilful intention to bring about the injury or death of himself or of another, or that the same resulted from his intoxication while on duty.

§ 3. **Approval of attorney's fees.**—Contingent fees of attorneys for services under this act shall be subject to the approval of the superior court.

§ 4. **Waiting period.**—No compensation except as provided by Section 12 of this article shall be paid under this act for any injury which does not incapacitate the employee for a period of at least two weeks from earning full

wages, but, if such incapacity extends beyond the period of two weeks, compensation shall begin on the fifteenth day after the injury.

§ 5. Medical and hospital services.—During the first two weeks after the injury the employer shall furnish reasonable medical and hospital services, and medicines when they are needed, the amount of the charge for such services to be fixed, in case of the failure of the employer and employee to agree, by the superior court.

§ 6. Death benefits—To whom paid—Amount.—If death results from the injury, the employer shall pay the dependents of the employee wholly dependent upon his earnings for support at the time of his injury a weekly payment equal to one-half his average weekly wages, earnings, or salary, but not more than ten dollars nor less than four dollars a week, for a period of three hundred weeks from the date of the injury: Provided, however, that, if the dependent of the employee to whom the compensation shall be payable upon his death is the widow of such employee, upon her death the compensation thereafter payable under this act shall be paid to the child or children of the deceased employee, including adopted and step-children, under the age of eighteen years, or over said age, but physically or mentally incapacitated from earning, dependent upon the widow at the time of her death. In case there is more than one child thus dependent, the compensation shall be divided equally among them. If the employee leaves dependents only partly dependent upon his earnings for support at the time of his injury, the employer shall pay such dependents for a period of three hundred weeks from the date of the injury a weekly compensation equal to the same proportion of the weekly payments herein provided for the benefit of persons wholly dependent as the amount contributed annually by the employee to such partial dependents bears to the annual earnings of the deceased at the time of injury. When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred weeks from the date of the injury: Provided, however, that, if the deceased leaves no dependents at the time of the injury, the employer shall not be liable to pay compensation under this act except as specifically provided in Section 9 of this article.

§ 7. Determination of dependency.—The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she lives or upon whom she is dependent at the time of his death.

(b) A husband upon a wife with whom he lives or upon whom he is dependent at the time of her death.

(c) A child or children, including adopted and step-children, under the age of eighteen years, or over said age, but physically or mentally incapacitated from earning, upon the parent with whom he is or they are living or upon whom he or they are dependent at the time of the death of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the compensation hereunder shall be divided equally among them.

In all other cases questions of entire or partial dependency shall be determined in accordance with the fact as the fact may have been at the time of the injury. In such other cases, if there is more than one person wholly

dependent, the compensation shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof during the period in which compensation is paid to persons wholly dependent. If there is no one wholly dependent and more than one person partly dependent, the compensation shall be divided among them according to the relative extent of their dependency.

§ 8. Member of family.—No person shall be considered a dependent unless he is a member of the employee's family or next of kin, wholly or partly dependent upon the wages, earnings or salary of the employee for support at the time of the injury.

§ 9. Burial expenses.—If the employee dies as a result of the injury leaving no dependents at the time of the injury, the employer shall pay, in addition to any compensation provided for in this act the reasonable expense of his last sickness and burial, which shall not exceed two hundred dollars.

§ 10. Permanent total disability.—While the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to one-half his average weekly wages, earnings, or salary, but not more than ten dollars nor less than four dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks from the date of the injury. In the following cases it shall, for the purposes of this section, be conclusively presumed that the injury resulted in permanent total disability, to wit: The total and irrevocable loss of sight in both eyes, the loss of both feet at or above the ankle, the loss of both hands at or above the wrist, the loss of one hand and one foot, an injury to the spine resulting in permanent and complete paralysis of the legs or arms, and an injury to the skull resulting in incurable imbecility or insanity.

§ 11. Partial disability.—While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to one-half the difference between his average weekly wages, earnings, or salary, before the injury and the average weekly wages, earnings or salary which he is able to earn thereafter, but not more than ten dollars a week; and in no case shall the period covered by such compensation be greater than three hundred weeks from the date of the injury.

§ 12. Schedule.—In case of the following specified injuries the amounts named in this section shall be paid in addition to all other compensation provided for in this act:

(a) For the loss by severance of both hands at or above the wrist, or both feet at or above the ankle, or the loss of one hand and one foot, or the entire and irrecoverable loss of the sight of both eyes, one-half of the average weekly wages, earnings, or salary, of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of one hundred weeks.

(b) For the loss by severance of either hand at or above the wrist, or either foot at or above the ankle, or the entire and irrevocable loss of the sight of either eye, one-half the average weekly wages, earnings, or salary of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of fifty weeks.

(c) For the loss by severance at or above the second joint of two or more fingers, including thumbs, or toes, one-half the average weekly wages, earnings, or salary of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twenty-five weeks.

(d) For the loss by severance of at least one phalange of a finger, thumb, or toe, one-half the average weekly wages, earnings, or salary of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twelve weeks.

§ 13 [as amended by Pub. Laws 1915, c. 1268, § 3]. Determination of average weekly earnings.—The “average weekly wages, earnings or salary” of an injured employee shall be ascertained as follows:

(a) “Average weekly wages, earnings or salary” shall mean the total earnings of the injured employee received from the employer in whose service he is injured during the period of the twenty-six calendar weeks immediately preceding the date of the injury, divided by the number of calendar weeks during which, or any portion of which, said workman was employed by, and actually worked for, the said employer; but if the injured employee has lost one or more calendar weeks during such period then the total earnings for the remainder of such twenty-six weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. In computing the time so lost, absence for seven consecutive calendar days, although not in the same calendar week, shall be considered as absence for a calendar week. Where the employment commenced other than at the beginning of a calendar week, or was terminated by the said injury other than at the end of a calendar week, such calendar week, and the wages earned during such week, shall be excluded in making the above computations.

(b) Where the employment previous to the injury is less than a net period of two calendar weeks, and where the foregoing method of arriving at the average weekly wages, earnings or salary cannot reasonably and fairly be applied, such average weekly wages, earnings or salary shall be taken at such sum as, having regard to the previous wages, earnings or salary of the injured employee, and of other employees of the same or most similar class, working in the same or most similar employment in the same establishment or in the same or a neighboring locality, shall reasonably represent the weekly earning capacity of the injured employee at the time of the accident in the employment in which he was working at such time.

(c) Where the employer has been accustomed to pay to the employee a sum to cover any special expense incurred by said employee by the nature of his employment, the sum so paid shall not be reckoned as part of the employee's wages, earnings or salary.

(d) The fact that an employee has suffered a previous injury, or received compensation therefor, shall not preclude compensation for a later injury or for death; but in determining the compensation for the later injury or death, his average weekly wages shall be such sum as will reasonably represent his weekly earning capacity at the time of the later injury, in the employment in which he was working at such time, and shall be arrived at according to, and subject to the limitations of, the provisions of this section, provided, that in computing the average weekly wages earned subsequent to the first injury the time worked and wages earned prior to said injury shall be excluded.

(e) The provisions of this section shall not apply to injuries sustained prior to the first day of July, A. D. 1915.

§ 14 [as amended by Pub. Laws 1913, c. 937]. Other benefits not considered.—No savings or insurance of the injured employee, independent of this act, shall be taken into consideration in determining the compensation to

be paid hereunder, nor shall benefits derived from any other source than the employer be considered in fixing the compensation under this act. Any employer who shall refuse or delay payment under this act on account of the receipt by any injured employee of such savings, insurance or benefits, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment not exceeding one year or both.

§ 15. To whom death benefits payable—Termination of incapacity compensation.—The compensation payable under this act in case of the death of the injured employee shall be paid to his legal representatives; or, if he has no legal representative, to his dependents entitled thereto, or, if he leaves no such dependents, to the person to whom the expenses for the burial and last sickness are due. If the payment is made to the legal representative of the deceased employee, it shall be paid by him to the dependents or other person entitled thereto under this act. All payments of compensation under this act shall cease upon the death of the employee from a cause other than or not induced by the injury for which he is receiving compensation.

§ 16. Incompetent or minor beneficiaries.—In case an injured employee is mentally incompetent, or, where death results from the injury, in case any of his dependents entitled to compensation hereunder are mentally incompetent or minors at the time when any right, privilege or election accrues to him or them under this act, his conservator, guardian, or next friend may, in his behalf, claim and exercise such right, privilege, or election, and no limitation of time in this act provided shall run so long as such incompetent or minor has no conservator or guardian.

§ 17. Notice and claim.—No proceedings for compensation for an injury under this act shall be maintained unless a notice of the injury shall have been given to the employer within thirty days after the happening thereof; and unless the claim for compensation with respect to such injury shall have been made within one year after the occurrence of the same, or, in case of the death of the employee, or in the event of his physical or mental incapacity, within one year after death or the removal of such physical or mental incapacity.

§ 18. Requisites of notice.—Such notice shall be in writing and shall state in ordinary language the nature, time, place and cause of the injury, and the name and address of the person injured and shall be signed by the person injured, or by a person in his behalf, or, in the event of his death, by his legal representative, or by a dependent, or by a person in behalf of either.

§ 19. Service of notice.—Such notice shall be served upon the employer, or upon one employer, if there are more employers than one, or, if the employer is a corporation, upon any officer or agent upon whom process may be served, by delivering the same to the person on whom it is to be served, or by leaving it at his last known residence or place of business, or by sending it by registered mail addressed to the person to be served, or, in the case of a corporation, to the corporation itself, at his or its last known residence or place of business; and such mailing of the notice shall constitute completed service.

§ 20. Inaccuracies—Actual knowledge.—A notice given under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the nature, time, place or cause of the injury, or the name and address of the person injured, unless it is shown that it was the in-

tention to mislead and the employer was in fact misled thereby. Want of notice shall not be a bar to proceedings under this act, if it be shown that the employer or his agent had knowledge of the injury or that failure to give such notice was due to accident, mistake or unforeseen cause.

§ 21. Medical examination.—The employee shall, after an injury, at reasonable times during the continuance of his disability, if so requested by his employer, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the state, furnished and paid for by the employer. The employee shall have the right to have a physician, provided and paid for by himself, present at such examination.

Any justice of the superior court may, at any time after an injury, on the petition of the employer or employee, appoint a competent and impartial physician or surgeon to act as a medical examiner, and the reasonable fees of such medical examiner as fixed by the justice appointing him shall be paid by the party moving for such appointment.

Such medical examiner being first duly sworn to the faithful performance of his duties before the justice appointing him or clerk of the court shall thereupon, and as often as necessary, examine such injured employee in order to determine the nature, extent and probable duration of the injury. Such medical examiner shall file a report of every examination made of such employee in the office of the clerk of the superior court having jurisdiction of the matter as provided in Section 16 of Article III of this act, and such report shall be produced in evidence in any hearing or proceeding to determine the amount of compensation due such employee under the provisions of this act. If such employee refuses to submit himself for any examination provided for in this act, or in any way obstructs any such examination, his rights to compensation shall be suspended and his compensation during such period of suspension may be forfeited.

§ 22. Contracting out.—No agreement by an employee, except as provided in Article IV, to waive his rights to compensation under this act shall be valid.

§ 23. Non-assignability and exemption.—No claims for compensation under this act, or under any alternative scheme permitted by Article IV of this act, shall be assignable, or subject to attachment, or liable in any way for any debts.

§ 24. Preference of compensation claims.—The claim for compensation under this act, or under any alternative scheme permitted by Article IV of this act, and any decree on any such claim, shall be entitled to a preference over the unsecured debts of the employer hereafter contracted to the same amount as the wages of labor are now preferred by the laws of this state; but nothing herein shall be construed as impairing any lien which the employee may have acquired.

§ 25. Commutation to lump sum.—In case payments have continued for not less than six months either party may, upon due notice to the other party, petition the superior court for an order commuting the future payments to a lump sum. Such petition shall be considered by the superior court and may be summarily granted where it is shown to the satisfaction of the court that the payment of a lump sum in lieu of future weekly payments will be for the best interest of the person or persons receiving or dependent upon such compensation, or that the continuance of weekly payments will, as compared with lump-

sum payments, entail undue expense or undue hardship upon the employer liable therefor, or that the person entitled to compensation has removed or is about to remove from the United States. Where the commutation is ordered the superior court shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments, capitalized at their present value upon the basis of interest calculated at five per centum per annum with annual rests. Upon paying such amount the employer shall be discharged from all further liability on account of the injury or death, and be entitled to a duly executed release, upon filing which, or other due proof of payment, the liability of such employer under any agreement, award, findings, or decree shall be discharged of record.

ARTICLE III.—PROCEDURE

§ 1. **Amicable settlement—Approval.**—If the employer and the employee reach an agreement in regard to compensation under this act, a memorandum of such agreement signed by the parties shall be filed in the office of the clerk of the superior court having jurisdiction of the matter as provided in Section 16 of this article. The clerk shall forthwith docket the same in a book kept for that purpose, and shall thereupon present said agreement to a justice of the superior court, and when approved by the justice the agreement shall be enforceable by said superior court by any suitable process, including executions against goods, chattels and real estate, and including proceedings for contempt for wilful failure or neglect to obey the provisions of said agreement. No appeal shall lie from the agreement thus approved unless upon allegation that such agreement has been procured by fraud or coercion. Such agreement shall be approved by the justice only when its terms conform to the provisions of this act.

When death has resulted from the injury and the dependents of the deceased employee entitled to compensation are, or the apportionment thereof among them is, in dispute, such agreement may relate only to the amount of compensation.

§ 2. **Petition in equity to superior court.**—If the employer and employee fail to reach an agreement in regard to compensation under this act, either employer or employee, and when death has resulted from the injury and the dependents of the deceased employee entitled to compensation are, or the apportionment thereof among them is, in dispute, any person in interest may file in the office of the clerk of the superior court having jurisdiction of the matter as provided in Section 16 of this article, a petition in the nature of a petition in equity setting forth the names and residences of the parties, the facts relating to employment at the time of the injury, the cause, extent and character of the injury, the amount of wages, earnings, or salary received at the time of the injury, and the knowledge of the employer or notice of the occurrence of the injury, and such other facts as may be necessary and proper for the information of the court, and shall state the matter in dispute and the claims of the petitioner with reference thereto.

§ 3. **Service of claim.**—Within four days after the filing of the petition, a copy thereof, attested by the petitioner or his attorney, shall be served upon the respondent in the same manner as a writ of summons in a civil action.

§ 4. **Answer.**—Within ten days after the filing of the petition, the respondent shall file an answer to said petition, together with a copy thereof for

the use of the petitioner, which shall state the claims of the respondent with reference to the matter in dispute as disclosed by the petition. No pleadings other than petition and answer shall be required to bring the cause to a hearing for final determination. The superior court may grant further time for filing the answer and allow amendments of said petition and answer at any stage of the proceedings. If the respondent do not file an answer, the cause shall proceed without formal default or decree pro confesso. If the respondent be an infant or person under disability, the superior court shall appoint a guardian ad litem for such infant or person under disability. Such guardian ad litem may be appointed on any court day after service of the copy referred to in Section 3 of this article, upon motion of any party after notice given as required for motions made in the superior court, and opportunity to said infant or person under disability to be heard in regard to the choice of such guardian ad litem. The guardian ad litem so appointed shall file the answer required by this section.

§ 5. Date of hearing—Precedence.—The petition shall be in order for assignment for hearing on the motion day which occurs next after fifteen days from the filing of the petition. Upon the days upon which said petition shall be in order for hearing it shall take precedence of other cases upon the calendar, except cases for tenements let or held at will or by sufferance.

§ 6. Summary decision—Enforcement—Conclusive findings—Costs.—The justice to whom said petition shall be referred by the court shall hear such witnesses as may be presented by each party, and in a summary manner decide the merits of the controversy. His decision shall be filed in writing with the clerk, and a decree shall be entered thereon. Such decree shall be enforceable by said superior court by any suitable process, including executions against goods, chattels and real estate, and including proceedings for contempt for wilful failure or neglect to obey the provisions of said decree. Such decree shall contain findings of fact, which, in the absence of fraud, shall be conclusive. The superior court may award as costs the actual expenditures, or such part thereof as to the court shall seem meet, but not including counsel fees, and shall include such costs in its decree. The superior court may refuse to award costs, and no costs shall be awarded against an infant or person under disability or against a guardian ad litem.

§ 7. Appeal to supreme court—Procedure.—Any person aggrieved by the final decree of the superior court under this act may appeal to the supreme court upon any question of law or equity decided adversely to the appellant by said final decree or by any proceeding or ruling prior thereto appearing of record, the appellant having first had his objections noted to any adverse rulings made during the progress of the trial at the time such rulings were made, if made in open court and not otherwise of record.

The appellant shall take the following steps:

(a) Within ten days after entry of said final decree he shall file a claim of appeal and, if a transcript of the testimony and rulings or any part thereof be desired, a written request therefor.

(b) Within such time as the justice of the superior court who heard the petition, or, in case of his inability to act from any cause within such time as any other justice thereof shall fix, whether by original fixing of the time, or by extension thereof, or by a new fixing after any expiration thereof, the appellant shall file reasons of appeal stating specifically all the questions of

law or equity decided adversely to him which he desires to include in his reasons of appeal, together with a transcript of as much of the testimony and rulings as may be required. The supreme court may allow amendments of said reasons of appeal. Upon the filing of said reasons of appeal and transcript, the clerk of the superior court shall present the transcript to the justice who heard the cause for allowance. The justice after hearing and examination, shall restore the transcript to the files of the clerk with a certificate of his action thereon made within twenty days after filing the transcript, unless the twentieth day shall fall in vacation, in which event the certificate may be filed at any time before the first Monday in the following month of October.

If the transcript be not allowed by the justice who heard the cause within the time prescribed, or objection to his allowance be made by any party, the correctness of the transcript may be determined by the supreme court by petition filed within thirty days after filing the transcript, unless the thirtieth day shall fall in vacation, in which event the correctness of the transcript may be determined by petition, filed on or before the tenth day after the first Monday in the following month of October. In all other respects than in time of filing the same course shall be followed as provided in Section 21 of Chapter 298 of the General Laws for establishing the truth of exceptions.

§ 8. **Certification of transcript.**—Upon the restoration of the transcript to the files, or, if there be no transcript, then upon the filing of the reasons of appeal, the clerk of the superior court shall certify the cause and all papers to the supreme court.

§ 9. **Suspension of operation of decree.**—The claim of an appeal shall suspend the operation of the decree appealed from, but, in case of default in taking the procedure required, such suspension shall cease, and the superior court upon motion of any party shall proceed as if no claim of appeal had been made, unless it be made to appear to the superior court that the default no longer exists.

§ 10. **Motion day.**—Any court day in the supreme court shall be a motion day for the purpose of hearing a motion to assign the appeal for hearing.

§ 11. **Decision of supreme court.**—The supreme court after hearing any appeal shall determine the same, and affirm, reverse or modify the decree appealed from, and may itself take, or cause to be taken by the superior court, such further proceedings as shall seem just. If a new decree shall be necessary, it shall be framed by the supreme court for entry by the superior court. Thereupon the cause shall be remanded to the superior court for such further proceedings as shall be required.

§ 12. **Stay of execution.**—No process for the execution of a final decree of the superior court from which an appeal may be taken shall issue until the expiration of ten days after the entry thereof, unless all parties against whom such decree is made waive an appeal by a writing filed with the clerk or by causing an entry thereof to be made on the docket.

§ 13. **Certification of question to supreme court.**—If, in the course of the proceedings in any cause, any question of law shall arise which in the opinion of the superior court is of such doubt and importance, and so affects the merits of the controversy, that it ought to be determined by the supreme court before further proceedings, the superior court may certify such question to the supreme court for that purpose, and stay all further proceedings except such as are necessary to preserve the rights of the parties.

§ 14. Review by superior court.—At any time before the expiration of two years from the date of the approval of an agreement, or the entry of a decree fixing compensation, but not afterwards, and before the expiration of the period for which compensation has been fixed by such agreement or decree, but not afterwards, any agreement, award, findings or decree may be from time to time reviewed by the superior court upon the application of either party, after due notice to the other party, upon the ground that the incapacity of the injured employee has subsequently ended, increased, or diminished. Upon such review the court may increase, diminish, or discontinue the compensation from the date of the application for review, in accordance with the facts, or make such other order as the justice of the case may require, but shall order no change of the status existing prior to the application for review. The finding of the court upon such review shall be served on the parties and filed with the clerk of the court having jurisdiction, in like time and manner and subject to like disposition as in the case of original decrees: Provided, that an agreement for compensation may be modified at any time by a subsequent agreement between the parties approved by the superior court in the same manner as original agreements in regard to compensation are required to be approved by the provisions of Section 1 of Article III of this act.

§ 15. Special procedure.—The superior court shall prescribe forms and make suitable orders as to procedure adapted to secure a speedy, efficient and inexpensive disposition of all proceedings under this act; and in making such orders said court shall not be bound by the provisions of the General Laws relating to practice. In the absence of such orders, special orders shall be made in each case.

§ 16. Venue.—Proceedings shall be brought either in the county where the accident occurred or in the county where the employer or employee lives or has a usual place of business. The court where any proceeding is brought shall have power to grant a change of venue.

§ 17. Abatement.—No proceedings under this act shall abate because of the death of the petitioner, but may be prosecuted by his legal representative or by any person entitled to compensation by reason of said death, under the provisions of this act.

§ 18. Limitations.—An employee's claim for compensation under this act shall be barred unless an agreement or a petition, as provided in this article, shall be filed within two years after the occurrence of the injury, or, in case of the death of the employee, or, in the event of his physical or mental incapacity, within two years after the death of the employee or the removal of such physical or mental incapacity.

§ 19. Payment to non-residents.—If an employee receiving a weekly payment under this act shall cease to reside in the state, or, if his residence at the time of the accident is in an adjoining state, the superior court, upon the application of either party, may, in its discretion, having regard to the welfare of the employee and the convenience of the employer, order such payment to be made monthly or quarterly instead of weekly.

§ 20. Determination of questions.—All questions arising under this act, if not settled by agreement of the parties interested therein, shall, except as otherwise herein provided, be determined by the superior court.

§ 21. Third party liability—Election of employé—Subrogation.—Where the injury for which compensation is payable under this act was caused

under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the employee may take proceedings both against that person to recover damages and against any person liable to pay compensation under this act for such compensation, but shall not be entitled to receive both damages and compensation; and if the employee has been paid compensation under this act, the person by whom the compensation was paid shall be entitled to indemnity from the person so liable to pay damages as aforesaid, and, to the extent of such indemnity, shall be subrogated to the rights of the employee to recover damages therefor.

§ 22 [as added by Pub. Laws 1913, c. 936]. **Record of proceedings.**—The proceedings in all cases under this act shall be deemed matters of record; but the same shall not be required to be recorded at large, but shall be filed and numbered in the office of the clerk of the superior court, and a docket only, or short memorandum thereof, shall be kept by said clerk, in books provided for that purpose.

ARTICLE IV.—ALTERNATIVE SCHEMES PERMITTED

§ 1. **Substitute schemes—Approval.**—Any employer may enter into an agreement with his employees in any employment to which this act applies to provide a scheme of compensation, benefit, or insurance, in lieu of the compensation provided for in this act, subject to the approval of the superior court. Such approval shall be granted only on condition that the scheme proposed provides as great benefits as those provided by this act; and, if the scheme provides for contributions by employees, it shall confer additional benefits at least equivalent to these contributions. If such a scheme meets with the approval of said court, the clerk shall issue a certificate enabling the employer to contract with any or all of his employees in employments to which this act applies to substitute such scheme for the provisions of this act for a period of not more than five years.

§ 2. **Contribution by employés.**—No scheme which provides for contributing by employees shall be so certified which does not contain suitable provisions for the equitable distribution of any money or securities held for the purpose of the scheme, after due provision has been made to discharge the liabilities already incurred, if and when such certificate is revoked or the scheme otherwise terminated.

§ 3. **Revocation and termination of scheme.**—If at any time the scheme no longer fulfils the requirements of this article, or is not fairly administered, or any other valid and substantial reason therefor exists, the superior court, on reasonable notice to the interested parties, shall revoke the certificate and the scheme shall thereby be terminated.

ARTICLE V.—INSURANCE AGAINST LIABILITY TO PAY COMPENSATION

(Added by Pub. Laws 1915, c. 1268.)

§ 1. **Optional methods of insurance.**—Every employer who has elected to become subject to the provisions of this act as provided in Section 5 of Article I thereof shall secure in one of the following ways the compensation for which he is or may become liable under said act;

1. By insuring and keeping insured against liability to pay such compensation in any stock or mutual company, or association, authorized to take such risks in this state;

2. By furnishing a sworn statement or other proof, from time to time, reasonably satisfactory to the commissioner of industrial statistics, of his financial ability to pay directly to injured employees or their dependents such compensation: Provided, that such statement or proof shall be approved by said commissioner, who shall give written notice thereof to the employer; and provided, further, that demand for such statement or proof shall not be made upon the employer by the said commissioner oftener than once in any calendar year; and provided, further, that any party aggrieved by any unreasonable requirement or demand of said commissioner may appeal to the superior court, and the provisions of Section 8 shall not apply while said appeal is pending.

3. By furnishing security, indemnity, or a bond, reasonably satisfactory to said commissioner, guaranteeing the payment of such compensation. Such bond shall run to the said commissioner for the benefit of the employees and their dependents and with such indemnity or security shall be deposited with him.

4. By a combination of the last two of the foregoing methods.

§ 2. **Requisites of policy.**—Every policy hereafter written insuring the payment of compensation under this act shall contain provisions to the effect that as between the employee and the insurer notice to and knowledge of the occurrence of injury on the part of the employer shall be deemed notice and knowledge on the part of the insurer; that jurisdiction of the employer for the purposes of this act shall be jurisdiction of the insurer; and that the insurer shall in all things be bound by and subject to the findings, judgments, orders and decrees rendered against the employer for the payment of compensation under this act.

§ 3. **Same.**—Every such policy shall cover the entire liability of the employer under this act, and shall contain an agreement by the insurer to the effect that the insurer shall be directly and primarily liable to the employee, and, in the event of his death, to his dependents, to pay to him or them the compensation, if any, for which the employer is liable.

§ 4. **Same.**—Every such policy shall also provide that the employee, or, in the event of his death, his dependents, shall have a first lien upon any amount which shall become owing on account of such policy to the employer from the insurer because of any accident to such employee, and that in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the employee or his dependents, the said insurer may and shall pay the same directly to the said employee or his dependents, thereby discharging to the extent of such payment the obligations of the employer to the employee or his dependents; and no such policy shall contain any provisions relieving the insurer from payment because of the employer's inability to pay on account of insolvency, bankruptcy, or otherwise, during the period that the policy is in force or the compensation remains owing.

§ 5. **Right to recover direct.**—Any employee entitled to compensation from his employer under this act shall, irrespective of any insurance contract, have the right to recover such compensation directly from the employer in the manner provided in this act, and, in addition thereto, the right to enforce in his own name, in the manner provided in this act, either by making the insurer a party to the original petition, or by filing a separate petition, the liability of any insurer who may have insured the employer against lia-

bility for such compensation: Provided, however, that payment in whole or in part of such compensation by either the employer or insurer shall, to the extent thereof, be a bar to recovery against the other of the amount so paid; and provided, further, that as between the employer and the insurer, payment by either directly to any employee shall be subject to the conditions of the insurance contract between them.

§ 6. Subrogation of insurer.—When any employer is insured against liability for compensation and the insurer shall have paid any compensation for which the employer was liable, or shall have assumed the liability of the employer therefor, the insurer shall be subrogated to all the rights and duties of the employer and may enforce such rights in its own name.

§ 7. Policies subject to Act.—Every contract hereafter made for the insurance of the compensation provided for in this act, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and all provisions of such policies inconsistent with this act shall be void.

§ 8. Failure to insure—Option of employé.—If any employer shall fail to comply with the provisions of this article within ten days after said article shall take effect, or in case he shall elect to become subject to the provisions of this act after this article takes effect, then within ten days after such election, he shall be liable for compensation to any injured employee or his dependents, according to the provisions of this act, or for damages in the same manner as if the employer had not elected to become subject to the provisions of said act, at the option of such employee or his dependents: Provided, such option is exercised and notice thereof in writing given to the employer within thirty days after the accident to such employee, otherwise the employer shall be liable only for the compensation payable under this act by employers who have elected to become subject to the provisions of said act.

§ 9. Requisites of policy.—Every policy hereafter written insuring against liability for personal injuries, other than payment of compensation under this act, shall contain provisions to the effect that the insurer shall be directly liable to the injured party, and, in the event of his death, to the party entitled to sue therefor, to pay him the amount of damages for which such insured is liable. Such injured party, or, in the event of his death, the party entitled to sue therefor, in his suit against the insured, may join the insurer as a defendant, in which case judgment shall bind either or both the insured and the insurer; or said injured party, or, in the event of his death, the party entitled to sue therefor, after having obtained judgment against the insured alone, may proceed on said judgment in a separate action against said insurer. Provided, however, that payment in whole or in part of such liability by either the insured or the insurer shall, to the extent thereof, be a bar to recovery against the other of the amount so paid; and provided, further, that in no case shall the insurer be liable for damages beyond the amount of the face of the policy.

"All policies made for the insurance against liability described in this section shall be deemed to be made subject to the provisions hereof, and all provisions of such policies inconsistent herewith shall be void."

ARTICLE VI.—REPORT OF ACCIDENTS*(Added by Pub. Laws 1915, c. 1268.)*

§ 1. **Employer's report of accident—Supplementary report.**—Every employer who shall be or become subject to the provisions of this act shall report in writing to the commissioner of industrial statistics all personal injuries sustained by accident by employees arising out of and in the course of their employment, if such injuries prove fatal or incapacitate the employee from earning full wages for a period of at least two weeks. If such injuries are immediately fatal, such report shall be made within forty-eight hours after they occur, and if they prove fatal later, then within forty-eight hours after death shall occur and come to the knowledge of the employer; if such injuries are not fatal, such report shall be made within one week after the expiration of such period of two weeks; at the termination of the period of incapacity, regardless of its duration, a supplementary report in writing shall be made. All reports required by the provisions of this section shall be made upon blanks supplied by said commissioner. If the employer and employee reach an agreement in regard to compensation under this act, with the memorandum of such agreement filed in the office of the clerk of the superior court in accordance with Section 1 of Article III of this act a duplicate of such memorandum shall be filed and upon the approval of said agreement by the court said duplicate duly attested by the clerk shall be forthwith sent by the clerk to said commissioner.

§ 2. **Failure a misdemeanor.**—Any such employer who refuses or neglects to make the reports required by the provisions of the last preceding section shall be deemed guilty of a misdemeanor, and upon conviction thereof may be punished by a fine of not more than fifty dollars for each offense.

§ 3. **Only report.**—No report of injuries to employees other than those required by this act shall be required by any other department or officer of the state from employers to whom the provisions of this act apply, and copies of all such reports received by the commissioner of industrial statistics in accordance with the requirements of this act shall be transmitted by him immediately to the factory inspector.

§ 4. **Not admissible as evidence.**—No report required by this act shall be admitted in evidence or referred to at the trial of any action or in any judicial proceedings whatsoever, except in prosecutions for the violation of this act.

§ 5. **Not public.**—No such report, or part or copy thereof, shall be open to the public, nor shall any of the contents thereof be disclosed in any manner, or be permitted to become known, by any officer or employee of the state or other person having access thereto, but the same shall be used for state investigation and statistics only, and such statistics shall in no way disclose the identity of the employer making the report. Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$100 for each offence, and if the offender be an officer or employee of the state, he shall be dismissed from the office and be incapable thereafter of holding an office under the state for a period of one year.

§ 6. **Commissioner of industrial statistics—Salary.**—In so far as is not inconsistent with other provisions of this act, the commissioner of in-

dustrial statistics shall have general supervision of the operation of said act and from time to time he may furnish employers and employees with such information relative to said act as may assist them in an understanding of their rights and obligations thereunder. The annual salary of the commissioner of industrial statistics is hereby fixed at five thousand dollars; and the state auditor is hereby authorized to draw his order or orders on the general treasurer from time to time for the payment of said sum, or so much thereof as may be necessary, and the sum of five thousand dollars is hereby annually appropriated for said purpose.

The sum of fifteen hundred dollars or so much thereof as may be necessary, is hereby appropriated out of any money in the treasury not otherwise appropriated, in addition to moneys heretofore appropriated, for the purpose of carrying this act into effect.

§ 7. Exemption of public utility.—The provisions of this article shall not apply to any public utility which is now required by law to make reports of accidents to the Public Utility Commission.

ARTICLE VII.—MISCELLANEOUS PROVISIONS

§ 1. Definitions.—In this act, unless the context otherwise requires:

(a) "Employer" includes any person, copartnership, corporation or voluntary association, and the legal representative of a deceased employer.

(b) "Employee" means any person who has entered into the employment of, or works under contract of service or apprenticeship with, an employer, and whose remuneration does not exceed eighteen hundred dollars a year. It does not include a person whose employment is of a casual nature, and who is employed otherwise than for the purpose of the employer's trade or business. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to his dependents as hereinbefore defined, or to his legal representative, or, where he is a minor, or incompetent, to his conservator or guardian.

§ 2. Other liabilities not affected.—Nothing in this act shall affect the liability of the employer to a fine or penalty under any other statute.

§ 3. Not retroactive.—The provisions of this act shall not apply to injuries sustained, or accidents which occur, prior to the taking effect hereof.

§ 4. Validity of sections independent.—If any section of this act shall be declared unconstitutional or invalid, such unconstitutionality or invalidity shall in no way affect the validity of any other portion thereof which can be given reasonable effect without the part so declared unconstitutional or invalid.

§ 5. Non-application of Gen. Laws, c. 283, § 14.—In all cases where an employer and employee shall have elected to become subject to the provisions of this act, the provisions of Section 14 of Chapter 283 of the General Laws, shall not apply while this act is in effect.

§ 6. Repealing clause.—All acts and parts of acts inconsistent herewith are hereby repealed.

§ 7. Title.—This act may be cited as "Workmen's Compensation Act."

§ 8. When effective.—This act shall take effect on the first day of October, nineteen hundred and twelve.

TEXAS

WORKMEN'S COMPENSATION ACT

Section

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WORKMEN'S COMPENSATION ACT

(Acts 33d Leg. p. 429, c. 179.)

An Act relating to employers' liability and providing for the compensation of certain employees, and their representatives and beneficiaries, for personal injuries sustained in the course of employment, and for deaths resulting from such injuries, and to provide and determine in what cases compensation shall be paid, and to make the payment thereof the more certain and prompt by the creation of an insurance association to insure and guarantee such payments and of an industrial accident board for the investigation of claims and for the adjudication thereof for consenting parties, fixing the membership and powers of said board and its compensation and duties, and the method of its appointment, and the term of office of its members, and fixing also the powers, duties and liabilities of said insurance association and the extent of control over the same to be exer-

cised by the Commissioner of Banking and Insurance, and providing also for the insurance of payments of compensation to employees by certain other insurance companies and organizations, and declaring an emergency. Be it enacted by the Legislature of the State of Texas:

PART I

§ 1. Abolition of defenses.—In an action to recover damages for personal injuries sustained by an employee in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:

1. That the employee was guilty of contributory negligence; but in such event the damages shall be diminished in the proportion to the amount of negligence attributable to such employee, provided that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence where the violation by such employer of any statute enacted for the safety of the employees contributed to the injury or death of such employee.

2. That the injury was caused by the negligence of a fellow employee.

3. That the employee had assumed the risk of the injury incident to his employment; but such employer may defend in such action on the ground that the injury was caused by the wilful intention of the employee to bring about the injury.

4. Provided, however, in all such actions against an employer who is not an (a) subscriber as defined hereafter in this Act, it shall be necessary to a recovery for the plaintiff to prove negligence of such employer or some agent or servant of such employer acting within the general scope of his employment.

§ 2. Employer freed from liability—Exemption of compensation.—The provisions of this Act shall not apply to actions to recover damages for the personal injuries or for death resulting from personal injuries sustained by domestic servants, farm laborers, nor to the employees of any person, firm or corporation operating any railway as a common carrier, nor to laborers engaged in working for a cotton gin, nor to employees of any person, firm or corporation having in his or their employ not more than five employees.

§ 3. Excepted employes.—The employees of a subscriber shall have no right of action against their employer for damages for personal injuries, and the representatives and beneficiaries of deceased employees shall have no right of action against such subscribing employers for damages for injuries resulting in death, but such employees and their representatives and beneficiaries shall look for compensation solely to the Texas Employers Insurance Association as the same is hereinafter provided for; provided, that all compensation allowed under the succeeding sections herein, shall be exempt from garnishment, attachment and all other suits or claims, as are current wages now exempted by law.

§ 4. Liability of non-subscribing employers.—Employees whose employers are not at the time of injury subscribers to said association, and the representatives and beneficiaries of deceased employees who at the time of injury were working for non-subscribing employers, cannot participate in the benefits of said Insurance Association, but they shall be entitled to bring suit, and may recover judgment against such employers, or any of them, for all damages sustained by reason of any personal injury received in the course of

employment, or by reason of death, resulting from such injury, and the provisions of Section One of this Act shall be applied in all such actions.

§ 5. **Exemplary damages.**—Nothing in this Act shall be taken or held to prohibit the recovery of exemplary damages by the surviving husband, wife and heirs or such of them as there may be of any deceased employee, whose death is occasioned by homicide, through the wilful act or omission or gross negligence of any person, firm or corporation, the employer of such employee at the time of the injury, causing the death of the latter, and in all cases where exemplary damages are sought under this section in case the injured party has already been awarded actual damages by the board herein provided, said fact and said amount so received shall be made known to the court or jury trying said cause for exemplary damages; and on the issue of exemplary damages he shall have the same defenses as under the existing law.

§ 6. **Waiting period.**—No compensation shall be paid under this Act for an injury which does not incapacitate the employee for a period of at least one week from earning full wages, but if incapacity extends beyond one week, compensation shall begin on the eighth day after injury.

§ 7. **Medical and hospital services.**—During the first week of the injury the association shall furnish reasonable medical aid, hospital services and medicines when needed, and if it does not furnish these immediately as and when needed, it shall repay all sums reasonably paid or incurred for same, provided, reasonable notice of injury shall be given to the said association, and this provision requiring notice shall apply to all subsequent sections of this Act providing for compensation.

§ 8. **Death benefits—Distribution.**—If death should result from the injury, the association hereinafter created, shall pay to the legal beneficiary of the deceased employee a weekly payment equal to 60 per cent. of his average weekly wages, but not more than \$15.00 nor less than \$5.00 a week, for a period of three hundred and sixty weeks from the date of injury; provided, that the compensation herein provided for shall be distributed according to the law providing for the distribution of other property of deceased.

§ 9. **Medical and burial expenses—Creditors.**—If the deceased employee leaves no legal beneficiaries, or creditors, the association shall pay all expenses incident to his last sickness, and in addition a funeral benefit not to exceed one hundred dollars; provided, where the deceased leaves no beneficiaries as provided herein, but leaves creditors, the association shall be liable to such creditors, for an amount not exceeding the amount that would otherwise have been due beneficiaries, which amount paid shall not exceed amount due such creditor or creditors.

§ 10. **Total incapacity.**—While the incapacity for work resulting from the injury is total, the association shall pay the injured employee a compensation equal to 60 per cent. of his average weekly wages, but not more than fifteen dollars, nor less than \$5.00 a week, and in no case shall the period covered by such compensation be greater than four hundred weeks.

§ 11. **Partial incapacity.**—While the incapacity for work resulting from the injury is partial, the association shall pay the injured employee a weekly compensation equal to 60 per cent. of the difference between his average weekly wages before the injury and the average weekly wages he is able to earn thereafter, but in no case to be more than \$15 a week; and the period covered by such compensation to be in no case greater than three hundred weeks.

§ 12. **Schedule.**—In case of the following specified injuries the amounts hereinafter named shall be paid by the association in addition to all other compensation: (a) For the loss by severance of both hands at or above the wrist, or of both feet at or above the ankle, or the loss of one hand and one foot, or the reduction to one-tenth of the normal vision in both eyes, 60 per cent. of the average weekly wages of the injured employee, but not more than fifteen dollars nor less than five dollars a week for a period of one hundred weeks. (b) For the loss by severance of either hand at or above the wrist, or either foot above the ankle, or the reduction to one-tenth of normal vision in either eye, 60 per cent. of the average weekly wages of the injured employee, but not more than \$15 nor less than \$5 a week, for a period of fifty weeks. (c) For the loss by severance at or above the second joint of two or more fingers, including thumbs and toes, 60 per cent. of the average weekly wages of the injured employee, but not more than \$15.00 nor less than \$5.00 a week, for a period of twenty-five weeks. (d) For the loss by severance of at least one joint of a finger, thumb or toe, 60 per cent. of the average weekly wages of the injured employee, but not more than \$15.00 nor less than \$5.00 a week, for a period of twelve weeks.

§ 13. **Incompetent or minor employé.**—If an injured employee is mentally incompetent or is a minor at the time when any rights or privileges accrue to him, under this Act, his guardian or next friend may in his behalf claim and exercise such rights and privileges.

§ 14. **Waiver of employé's rights.**—No agreement by an employee to waive his rights to compensation under this Act shall be valid.

§ 15. **Lump sum payment.**—In cases where death or total permanent disability results from an injury, the liability of the association may be redeemed by payment of a lump sum by agreement of the parties thereto, subject to the approval of the "Industrial Accident Board" hereinafter created.

§ 16. **Survivability of cause of action.**—In all cases of injury resulting in death, where such injury was received in the course of employment, cause of action shall survive.

PART II

§ 1. **Creation of Industrial Accident Board.**—There shall be an "Industrial Accident Board" consisting of three members, and the same is hereby created, to be appointed by the Governor, one of whom shall be designated as Chairman, and the term of office shall be two years for members of the board.

§ 2. **Members.**—One member of the Industrial Accident Board shall be at the time of its appointment, an employer of labor in some industry or business covered by this Act; one shall be at the time of his appointment a wage earner employed in some industry or business covered by this Act, and the third member shall be, at the time of his appointment a practicing attorney of recognized ability, said member to act in the capacity of legal advisor to the board in addition to his other duties as a member thereof.

§ 3. **Salaries and expenses.**—The salaries and expenses of the Industrial Accident Board shall be paid by the State. The salary of the Chairman shall be three thousand dollars a year, and the salaries of the other members of the board shall be two thousand and five hundred dollars a year each. The board may appoint a secretary at a salary of not more than two thousand

dollars a year and may remove him at any time, furnishing him, upon demand, with a statement of the cause of his removal. It shall also be allowed an annual sum not exceeding five thousand a year, for clerical services, traveling and other necessary expenses. The board shall be provided suitable offices in the capitol or some other convenient building in the City of Austin, where its records shall be kept.

§ 4. Rules and procedure—Examination by physician.—The board may make rules not inconsistent with this Act, for carrying out and enforcing its provisions, and may require any employee claiming to have sustained injury to submit himself for examination before such board or some one acting under its authority at some reasonable time and place within the State, and as often as may be reasonably ordered by the board, to a physician or physicians, authorized to practice under the laws of this State. If the employee requests, he shall be entitled to have a physician or physicians of his own selection present to participate in such examination. Refusal of the employee to submit to such examination shall deprive him of the right to compensation during the continuance of such refusal. When a right to compensation is thus suspended, no compensation shall be payable in respect of the period of suspension. Process and procedure shall be as summary as may be under this Act. The board or any member thereof shall have power to subpoena witnesses, administer oaths, inquire into matters of fact, and to examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. All rulings or decisions of the board relating to disputed claims shall be based upon questions of fact, and in accord with the provisions of this Act.

§ 4a. Notice and claim—Limitations.—No proceedings for compensation for injury under this Act shall be maintained unless a notice of the injury shall have been given to the association or subscriber, as soon as practicable after the happening thereof and unless the claim for compensation with respect to such injury shall have been made within six months after the occurrence of the same; or, in case of the death of the employee, or in the event of his physical or mental incapacity, within six months after death or the removal of such physical or mental incapacity.

§ 5. Dissatisfaction with findings of Board—Suit.—All questions arising under this Act if not settled by agreement of the parties interested therein, shall, except as otherwise herein provided, be determined by the Industrial Accident Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said board on any disputed claim may sue on such claim or may require suit to be brought thereon in some court of competent jurisdiction, and the board shall proceed no further toward the adjustment of such claim; provided, however, that whenever any such suit is brought, the rights and liabilities of the parties thereto shall be determined by the provisions of this Act, and the suit of the injured employee or persons suing on account of the death of such employee shall be against the association, if the employer of such injured or deceased employee is at the time of such injury or death a subscriber, as defined in this Act, in which case the recovery shall not exceed the maximum compensation allowed under the provisions of this Act, and the court shall determine the issues in such cause instead of said board.

§ 6. Independent and sub-contractors—Indemnity.—If a subscriber enters into a contract, written or oral, with an independent contractor to do

such subscriber's work, or if a contractor enters into a contract with a sub-contractor to do all or any part of the work comprised in such contract with the subscriber, and the association would, if such work was executed by employees immediately employed by the subscriber, be liable to pay compensation under this Act to such employees, the Association shall pay to such employees any compensation which would be payable to them under this Act if the independent or sub-contractors were subscribers. The association shall, however, be entitled to recover indemnity from any other persons who would have been liable to such employees independently of this Section, and if the association has paid compensation under the terms of this Section, it may enforce in the name of the employees, or in its own name and for its own benefit the liability of such other persons. This Section shall not apply to independent or sub-contractors on any contract which is merely auxiliary and incidental to, and is not part of or process in, the trade or business carried on by the subscriber.

§ 7. Employer's report of accident—Penalty for failure to report.—Every employer shall hereafter keep a record of all injuries, fatal or otherwise received by his employees in the course of their employment. Within eight days after the occurrence of an accident resulting in a personal injury to an employee, a report thereof shall be made in writing to the Industrial Accident Board on blanks to be procured from the board for that purpose. Upon the termination of the disability of the injured employee, or if such disability extends beyond a period of sixty days, the employer shall make a supplemental report upon blanks to be procured for that purpose. The said report shall contain the name and nature of the business, of the employer, the location of the establishment, the name, age, sex and occupation of the injured employee, and shall state the date and hour of the accident, and the nature and cause of injury, and such other information as the board may require. Any employer failing or refusing to make any such report within the time herein provided, or failing or refusing to give to said board any information demanded by said board, relating to any injury to an employee which information is in the possession of, or could have been ascertained by the employer by the use of reasonable diligence shall be liable for and shall pay to the State of Texas a penalty of not more than one thousand (\$1000) dollars for each and every offense, the same to be recovered in a suit to be instituted and prosecuted by the Attorney General, or under his direction, either in the district court of Travis County, or in the county in which any defendant resides at the option of the said Attorney General.

PART III

§ 1. Employers' Insurance Association.—"The Texas Employers' Insurance Association" is hereby created a body corporate with the powers provided in this Act and with all the general corporate powers incident thereto.

§ 2. Directors.—The Governor shall appoint a board of directors of the association consisting of twelve members, who shall serve for a term of one year, or until their successors are elected by ballot by the subscribers at such time and for such term as the by-laws shall provide.

§ 3. Preliminary power of directors.—Until the first meeting of the subscribers, the board of directors shall have and exercise all of the powers of the subscribers, and may adopt by-laws not inconsistent with the provisions

of this Act, which shall be in effect until amended or repealed by the subscribers.

§ 4. **Officers.**—The board of directors shall annually choose by ballot a president who shall be a member of the Board, a Secretary, a Treasurer and such other officers as the by-laws may provide.

§ 5. **Quorum—Vacancies in office.**—Seven or more of the directors shall constitute a quorum for the transaction of business. Vacancies in any office may be filled in such manner as the by-laws shall provide.

§ 6. **Subscribers.**—Any employer of labor in the State may become a subscriber excepting as provided in Part I, Section two of this Act.

§ 7. **First meeting of subscribers.**—The board of directors shall, within thirty days of the subscription of twenty-five employers call the first meeting of the subscribers by a notice in writing mailed to each subscriber at his residence or place of business not less than ten days before the date fixed for the meeting.

§ 8. **Votes of subscribers.**—In any meeting of the subscribers, each subscriber shall have one vote, and if a subscriber has five hundred employees to whom the association is bound to pay compensation, he shall be entitled to two votes, and he shall be entitled to one additional vote for each additional five hundred employees to whom the association is bound to pay compensation, but no subscriber shall cast, by his own right, or by right of proxy, more than ten votes.

§ 9. **Requisite number of subscribers.**—No policy shall be issued by the association until not less than fifty employers have subscribed; who have not less than two thousand employees (employés) to whom the association may be bound to pay compensation.

§ 10. **List of subscribers.**—No policy shall be issued by the association until a list of the subscribers with the number of employees of each, together with such other information as the Commissioner of Banking and Insurance may require, shall have been filed with the Department of Banking and Insurance, nor until the President and Secretary of the Association shall have certified under oath that every subscription on the list so filed is genuine and made with an agreement with every subscriber that he will take the policies so subscribed for by him within thirty days of the granting of a license to the association by the Commissioner of Banking and Insurance to issue policies.

§ 11. **Less than fifty subscribers.**—If the number of subscribers falls below fifty, or the number of employees to whom the association may be bound to pay compensation falls below two thousand, no further policies shall be issued until other employers have subscribed, who, together with existing subscribers amount to not less than fifty, who have not less than two thousand employees to whom the association may be bound to pay compensation, said subscription to be subject to the provisions of the preceding section.

§ 12. **License of association.**—Upon the filing of the certificates provided for in the two preceding sections, the Commissioner of Banking and Insurance shall make such investigations as he may deem proper and if his findings warrant it, grant a license to the association to issue policies.

§ 13. **Classification of employers—Premiums.**—The board of directors shall distribute the subscribers into groups in accordance with the nature of the business and the degree of hazard incident thereto. Subscribers within

each group shall annually pay in cash such premiums as may be required to pay the compensation herein provided for the inquiries (injuries) which may occur in that year.

§ 14. Contingent liability.—The association may in its by-laws and policies fix the mutual contingent liability of the subscribers for the payment of losses and expenses not provided for by its cash fund, but such contingent liability of a subscriber shall not be less than an amount equal to and in addition to the cash premium.

§ 15. Special assessments.—If the association is not possessed of cash funds above its insured premiums sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the subscribers liable to assessment therefor in proportion to their several liability. Every subscriber shall pay his proportional part of any assessment which may be levied by the Association, in accordance with the laws and his contract, on account of injuries sustained and expenses incurred while he is a subscriber.

§ 16. Dividends.—The board of directors may from time to time, by vote fix the amount to be paid as dividends upon the policies expiring during each year after retaining sums sufficient to pay all compensations, which may be payable on account of injuries sustained and expenses incurred. All premiums, assessments and dividends shall be fixed by and for groups as heretofore provided in accordance with the experience of such group, but all the funds of the association and the contingent liability of all of the subscribers shall be available for the payment of any approved claim for compensation against the association.

§ 17. Approval by commissioner of banking and insurance.—Any proposed premium, assessment, dividend or distribution of subscribers shall be filed with the Commissioner of Banking and Insurance and shall not take effect until approved by him after such investigation as he may deem proper and necessary.

§ 18. Safety rules—Access to employer's premises.—The board of directors shall make and enforce reasonable rules for the prevention of injuries on the premises of subscribers, and for this purpose the inspector of the association shall have free access to all such premises during regular working hours. Any subscriber aggrieved by such rule or regulation may petition the Industrial Accident Board for a review, and it may affirm, amend or annul the rule or regulation.

§ 19. Notice of insurance.—Every subscriber shall, as soon as he secures a policy, give notice in writing or print, to all persons under contract of hire with him that he has provided for payment of compensation for injuries with the association.

§ 20. Same—Notice of withdrawal.—Every subscriber shall, after receiving a policy, give notice in writing or print, to all persons with whom he is about to enter into a contract of hire, that he has provided for payment of compensation for injuries by the association. If any employer ceases to be a subscriber, he shall on or before the day on which his policy expires, give notice to that effect in writing or print to all persons under contract of hire with him. In case of the renewal of his policy, no notice shall be required under this Act. He shall file a copy of said notice with the Industrial Accident Board.

§ 21. **Judgment against employer.**—If a subscriber, who has complied with all the rules, regulations and demands of the association, is required by any judgment of a court of law to pay any employee any damages, on account of any personal injury sustained by such employee during the period of subscription, the association shall pay to the subscriber the full amount of the judgment and the cost assessed therewith if the subscriber shall have given the association notice of the bringing of the action upon which the judgment was recovered, and an opportunity to appear and defend same.

§ 22. **Expiration of powers of association.**—The corporate powers of the association shall not expire because of failure to issue policies or make insurance.

§ 23. **Expenses.**—The board of directors appointed by the Governor under the provisions of Part III, Section two of this Act, may incur such expenses in the performance of its duties, as may be approved by the Governor. Such expenses shall be paid by the State out of any funds not otherwise appropriated, not to exceed five thousand dollars.

PART IV

§ 1. **Definitions.**—The following words and phrases, as used in this Act, shall, unless a different meaning is plainly required by the context, have the following meaning: "Employer," shall include the legal representatives of any original employer. "Employee" shall include every person in the service of another under any contract of hire, expressed or implied, oral or written, except one whose employment is but casual, or is not in the usual course of the trade, business, profession or occupation of the employer. Any reference to any employee who has been injured shall when the employee is dead, also include the legal beneficiaries of such employee to whom compensation may be payable. "Average Weekly Wages" shall mean the earnings of the injured employee during the period of twelve calendar months, immediately preceding the date of injury, divided by fifty-two; but if the injured employee lost more than two weeks during such period, then the earnings for the remainder of the twelve calendar months shall be divided by the number of weeks remaining after the last (lost) has been deducted. When, by reason of the shortness of the time of the employment of the employee, it is impracticable to compute the average weekly wages as above defined, it shall be computed by the Industrial Accident Board in any manner which may seem just and fair to both parties. "Association" shall mean the "Texas Employees Insurance Association," or any other insurance company authorized under this Act to insure the payment of compensation to injured employees, or to the beneficiaries of deceased employees. "Subscriber" shall mean any employer who has become a member of the association by paying a year's premium in advance and receiving the receipt of the association therefor, provided, that the Association holds a license issued by the Commissioner of Banking and Insurance as provided for in Part III, Section twelve of this Act.

§ 2. **Insurance by private companies.**—Any insurance company, which term shall include mutual and reciprocal insurance companies lawfully transacting a liability or accident business within this State, shall have the same right to insure the liability to pay the compensation provided for by Part One of this Act, and when such company issues a policy conditioned to pay such compensation, the holder of such policy shall be regarded as a subscriber so

far as applicable under this Act; and when such company insures such payment of compensation it shall be subject to the provisions of Parts One, Two and Four and of Sections 10, 17 and 21 of Part Three of this Act, and shall file with the Commissioner of Banking and Insurance, its classification of premiums none of which shall take effect until the Commissioner of Banking and Insurance has approved same as adequate to the risks to which they respectively apply and not greater than charged by the association, and such company may have and exercise all of the rights and powers, conferred by this Act on the association created hereby but such rights and powers shall not be exercised by a mutual or reciprocal organization unless such organization has at least fifty subscribers, who have not less than two thousand employees.

§ 3. **Refund of premium.**—Any subscriber who has paid his annual premium as provided in Section I, Part four of this Act, but who ceases to be an employer after three months and before the expiration of one year, may by satisfactory proof of such fact made to the Industrial Accident Board as herein created, be entitled to a refund of such portion of the annual premium so paid by him as the portion of the year in which he is not an employer bears to the whole year; provided, that in no event shall more than three-fourths of the annual premium by any subscriber who claims the benefit of this refund, ever be refunded.

§ 4. **Constitutionality.**—Should any part of this Act be, for any reason held to be invalid, or inoperative, no other part or parts shall be affected thereby, and if any exception to or limitation upon any general provision herein contained shall be held to be unconstitutional or invalid or ineffective the general provision shall nevertheless stand effective and valid as if it had been enacted without exception or limitation.

§ 5. **Repealing clause.**—All laws or parts of laws in conflict herewith are hereby repealed.

§ 6. **When effective.**—This Act shall take effect and be in force on and after the first day of September, Nineteen Hundred and Thirteen.

§ 7. **Emergency declared.**—There now being no adequate law on the Statutes to protect the rights of industrial employees who may be injured in industrial accidents and the beneficiaries of such employees who may be killed in such accidents, creates an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, and the same is hereby suspended, and this Act shall take effect from and after its passage, and it is so enacted.

Approved April 16, 1913.

VERMONT

WORKMEN'S COMPENSATION ACT

Section

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VERMONT WORKMEN'S COMPENSATION ACT.

(Acts 1915, No. 164, p. 275.)

An Act relating to compensation to employees for personal injuries.

It is hereby enacted by the General Assembly of the State of Vermont:

PART I.—ELECTION TO COME UNDER THIS ACT

§ 1. **Election by employer or employé.**—This act, except sections 2 and 3, relating to defenses, and section 55, relating to reports, shall not apply to any employer or employee unless prior to the injury they shall have so elected by agreement, either express or implied, as hereinafter provided. Such agreement shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in this act, and shall bind the employee himself, his widow, the employee's widower, personal representative, and next of kin and dependents as hereinafter defined, as well as the employer and those conducting his business during bankruptcy or insolvency.

Every contract of hiring—verbal, written, or implied—now in operation or made or implied prior to the time limited for this act to take effect shall after this act takes effect be presumed to continue subject to the provisions of this act unless either party shall at any time prior to accident, in writing, notify the other party to such contract and the board that the provisions of this act, other than sections 2, 3, and 55, are not intended to apply.

Every contract of hiring—verbal, written, or implied—made subsequent to the time provided for this act to take effect shall be presumed to have been made subject to the provisions of this act, unless there be, as a part of said contract, an express statement in writing prior to accident, either in the contract itself or by written notice by either party to the other and to the board, that the provisions of this act, other than sections 2, 3, and 55, are not intended to apply, and it shall be presumed that the parties have elected to be subject to the provisions of this act and to be bound thereby. In the employment of minors this act shall be presumed to apply unless the notice be given by or to the parent or guardian of the minor.

The agreement for the operation of the provisions of this act, other than sections 2, 3, and 55, may be terminated by either party upon 60 days' notice to the other and to the board in writing prior to any accident.

§ 2. **Defenses in case employer does not elect to come under this Act.**—If an employee has elected as aforesaid to come under this act and his employer has elected as aforesaid not to come under this act, then if an action is brought by the employee or his next of kin or personal representative to recover for personal injuries sustained after such election by the employer arising out of and in the course of his employment, it shall not be a defense—

- (a) That the employee was negligent;
- (b) That the injury was caused by the negligence of a fellow-employee;
- (c) That the employee had assumed the risk of the injury.

§ 3. **Defenses in case employé does not elect to come under this Act.**—If an employer has elected as aforesaid to come under this act and his employee has elected as aforesaid not to come under this act, then if an action is brought by the employee to recover damages for personal injuries or by

his personal representatives for damages on account of his death resulting from personal injuries sustained after the employee has so elected, and arising out of and in the course of his employment, the employer shall have all the defenses which he would have had if this act had not been enacted.

PART II.—RIGHTS AND REMEDIES GRANTED AND AFFECTED

§ 4. Employments covered.—This act shall apply to all public and all industrial employment, as hereinafter defined, but shall not apply to domestic servants or to employers who regularly employ but ten employees or less provided that an employer who employs ten men or less may notify the board herein provided that he wishes to be included within the provisions of this act and thereafter, the provisions of this act shall apply to him, the same as if he employed to exceed ten men. If a workman receives personal injury by accident arising out of and in the course of such employment, his employer or the insurance carrier shall pay compensation in the amounts and to the person or persons hereinafter specified.

§ 5. State and municipal bodies.—This act shall apply to employees (other than officials as hereinafter defined) of cities, towns and incorporated villages and fire districts within the state. Policemen, firemen, and others entitled to pensions shall be deemed employees within the meaning of this act. If, however, any policeman, fireman or other person entitled to a pension claims compensation under this act there shall be deducted from such compensation any sum which such policeman or fireman or other person may be entitled to receive from any pension or other benefit fund to which the municipal body may contribute, provided, however, that the provisions of this act shall not apply unless and until such municipal body so votes at any meeting duly warned for that purpose.

§ 6. Injuries not covered.—No compensation shall be allowed for an injury caused (1) by the employee's willful intention to injure himself or to injure another, or (2) by or during his intoxication or (3) by failure to use a safety appliance provided. If the employer claims an exemption or forfeiture under this section the burden of proof shall be upon him.

§ 7. Right to compensation exclusive.—The rights and remedies herein granted to an employee on account of a personal injury for which he is entitled to compensation under this act shall exclude all other rights and remedies of such employee, his personal representatives, dependents, or next of kin, at common law or otherwise on account of such injury.

Employers, who hire workmen within this state to work outside of the state, may agree with such workmen that the remedies under this act shall be exclusive as regards injuries received outside this state by accident arising out of and in the course of such employment; and all contracts of hiring in this state shall be presumed to include such an agreement.

§ 8. Liability of third persons.—When any injury for which compensation is payable under this act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employee may, at his option, either claim compensation under this act or obtain damages from or proceed at law against such other person to recover damages; and if compensation is claimed and awarded under this act any employer having paid the compensation or having become liable therefor shall be subrogated to the rights of the injured

employee to recover against that person, provided, if the employer shall recover from such other person damages in excess of the compensation already paid or awarded to be paid under this act, then any such excess shall be paid to the injured employee less the employer's expenses and costs of action.

§ 9. **Contracting out.**—No contract, rule, regulation, or device whatsoever shall operate to relieve the employer in whole or in part from any liability created by this act.

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PART III.—COMPENSATION

§ 10. **Death benefits.**—If death results from the injury within two years, the employer or the insurance carrier shall pay to the persons entitled to compensation or, if there are none, then to the personal representative of the deceased employee, burial expenses not to exceed seventy-five dollars; and shall also pay to or for the following persons for the following periods a weekly compensation equal to the following percentages of the deceased employee's average weekly wages as defined in section 17: provided that the total amounts payable on account of a single death shall not exceed the sum of thirty-five hundred dollars and the amounts herein allowed shall be ratably reduced, if necessary, to conform to this limitation.

(a) To the dependent widow or widower, if there be no dependent children, thirty-three and one-third per cent.

(b) To the dependent widow or widower, if there be one or two dependent children, forty per cent; or if there be three or more dependent children, forty-five per cent. Such compensation to the widow or widower shall be for the use and benefit of such widow or widower and of the dependent children, and the industrial accident board may from time to time apportion such compensation between them in such way as it deems best.

(c) If there be no dependent widow or widower, but a dependent child or children, then to such child or children, twenty-five per cent, with ten per cent additional for each child in excess of two, with a maximum of forty per cent, to be divided equally among such children if more than one.

(d) If there be neither dependent widow, widower, nor child, but there be a dependent father or mother, then to such parent, if wholly dependent, twenty-five per cent, or if partially dependent, fifteen per cent, or if both parents be dependent then one half of the foregoing compensation to each of them; or, if there be no such parents, but a dependent grandparent, then to every such grandparent the same compensation as to a parent.

(e) If there be neither dependent widow, widower, child, parent, or grandparent, but there be a dependent grandchild, brother, or sister, or two or more of them, then to such dependents, fifteen per cent for one such dependent and five per cent additional for each additional such dependent, with a maximum of twenty-five per cent, to be divided equally between such dependents if more than one.

§ 11. **Dependents.**—The following persons, and they only, shall be deemed dependents and entitled to compensation under the provisions of this act: A child if under eighteen years of age, or incapable of self-support and unmarried, whether ever actually dependent upon the deceased or not.

The widow only if living with the deceased, or actually dependent, wholly or partially, upon him.

The widower only if incapable of self-support, and actually dependent, wholly or partially, upon the deceased at the time of her injury.

A parent or grandparent only if actually dependent, wholly or partially, upon the deceased.

A grandchild, brother, or sister only if under eighteen years of age, or incapable of self-support, and wholly dependent upon the deceased. The relation of dependency must exist at the time of the injury.

§ 12. Periods of compensation.—The compensation herein provided for shall be payable during the following periods:

To a widow, until death or remarriage, but in no case to exceed two hundred sixty weeks.

To a widower, during disability or until remarriage, but in no case to exceed two hundred sixty weeks.

To or for a child during dependency as hereinbefore defined but in no case to exceed two hundred and sixty weeks.

To a parent or grandparent, during the continuation of a condition of actual dependency, but in no case to exceed two hundred eight weeks.

To or for a grandchild, brother, or sister, during dependency as hereinbefore defined, but in no case to exceed two hundred eight weeks.

Upon the cessation of compensation under this section to or on account of any person, the compensation of the remaining persons entitled to compensation for the unexpired part of the period during which their compensation is payable shall be that which such persons would have received if they had been the only persons entitled to compensation at the time of the decedent's death.

§ 13. Sundry provisions as to death benefits.—In computing death benefits the average weekly wages of the deceased employee shall be considered not to be more than twenty-five dollars, nor less than five dollars; but the total weekly compensation shall not exceed in any case the average weekly wages computed as provided in section 17.

Payment of death benefits by an employer in good faith to a dependent subsequent in right to another or other dependents shall protect and discharge the employer unless and until such dependent or dependents prior in right shall have given him notice of his or their claim. In case the employer is in doubt as to the respective rights of rival claimants he may apply to the industrial accident board to decide between them.

In case death occurs after a period of disability, either total or partial, the period of disability shall be deducted from the total periods of compensation respectively stated in section 12.

The compensation of a person who is insane shall be paid to his or her guardian.

§ 14. Medical attendance.—During the first fourteen days of disability the employer shall furnish reasonable surgical, medical, and hospital services and supplies not exceeding the amount of seventy-five dollars. The pecuniary liability of the employer for the medical, surgical, and hospital service herein required shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person.

§ 15. Total disability.—Where the injury causes total disability for work the employer during such disability, but not including the first fourteen days thereof, shall pay the injured employee a weekly compensation equal to fifty per cent of his average weekly wages, but not more than twelve dol-

lars and fifty cents, nor less than three dollars a week. In no case shall the weekly payments continue after the disability ends, nor longer than two hundred sixty weeks, in the case of permanent disability, nor longer than twenty-six in the case of temporary disability, unless the board upon application and investigation decides that it should be longer continued, in which case it may order the continuance of such payments for not to exceed an additional fifty-two weeks.

In case of an employee whose average weekly wages are less than three dollars a week the weekly compensation shall be the full amount of such average weekly wages, but where the disability is permanent the weekly compensation in such case shall be three dollars. In case the total disability begins after a period of partial disability the period of partial disability shall be deducted from such total period of two hundred sixty weeks.

In case of the following injuries the disability caused thereby shall be deemed total and permanent; to wit:

- (1) The total and permanent loss of sight in both eyes.
- (2) The loss of both feet at or above the ankle.
- (3) The loss of both hands at or above the wrist.
- (4) The loss of one hand and one foot.
- (5) An injury to the spine resulting in permanent and complete paralysis of both legs or both arms or of one leg and of one arm.
- (6) An injury to the skull resulting in incurable imbecility or insanity.

The above enumeration is not to be taken as exclusive, provided that the total amount payable on account of an accident to one person resulting in permanent total disability shall not exceed the sum of four thousand dollars.

§ 16. Partial disability—Schedule.—Where the injury causes partial disability for work the employer, during such disability and for a period of five years beginning on the fifteenth day of disability, shall pay the injured workman a weekly compensation equal to fifty per cent of the difference between his average weekly wages before the accident and the weekly wages he is most probably able to earn thereafter, but not more than ten dollars a week. In no case shall the weekly payments continue after the disability ends, and in case the partial disability begins after a period of total disability the period of total disability shall be deducted from such total period of five years.

In case of the following injuries the compensation shall be fifty per cent of the average weekly wages, but not more than ten dollars to be paid weekly for the periods stated against such injuries respectively, to wit:

- (1) The loss by separation of one arm at or above the elbow joint, or the permanent and complete loss of the use of one arm, one hundred seventy weeks.
- (2) The permanent and complete loss of hearing in both ears, one hundred seventy weeks.
- (3) The loss by separation of one leg at or above the knee joint, or the permanent and complete loss of the use of one leg, one hundred seventy weeks.
- (4) The loss by separation of one hand at or above the wrist joint, or the permanent and complete loss of the use of one hand, one hundred forty weeks.
- (5) The loss by separation of one foot at or above the ankle joint, or the permanent and complete loss of the use of one foot, one hundred twenty weeks.
- (6) The loss by separation of a thumb, forty weeks.
- (7) The loss by separation of a first finger, commonly called the index finger, twenty-five weeks.

(8) The loss by separation of a second finger, twenty weeks.

(9) The loss by separation of a third finger, fifteen weeks.

(10) The loss by separation of a fourth finger, ten weeks.

(11) The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of one-half of such thumb or finger, and compensation shall be for one-half of the periods of time above specified, and compensation for loss of one-half of the first phalange shall be for one-fourth of the periods of time above specified.

(12) The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; providing, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

(13) The loss by separation of a great toe, twenty weeks.

(14) The loss by separation of one of the toes other than a great toe, eight weeks.

(15) The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe and compensation shall be one-half of the amount specified above.

(16) The loss of more than one phalange of any toe shall be considered as the loss of the entire toe.

(17) The loss of an eye, one hundred weeks.

In all other cases in this class, or where the usefulness of a member or any physical function, is permanently impaired, the compensation shall bear such relation to the amounts stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule.

§ 17. Computation of wages.—Average weekly wages shall be computed in such a manner as is best calculated to give the average weekly earnings of the workman during the twelve months preceding his injury; provided that where, by reason of the shortness of the time during which the workman has been in the employment, or the casual nature of the employment, or the terms of the employment, it is impracticable to compute the rate of remuneration, regard may be had to the average weekly earnings which, during the twelve months previous to the injury, were being earned by a person in the same grade employed at the same work by the employer of the injured workman, or if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district.

If a workman at the time of the injury is regularly employed in a higher grade of work than formerly during the year and with larger regular wages, only such larger wages shall be taken into consideration in computing his average weekly wages.

§ 18. Voluntary payments.—Any payments made by the employer or his insurer to the injured workman during the period of his disability, or to his dependents, which, by the terms of this act, were not due and payable when made, may, subject to the approval of the board, be deducted from the amount to be paid as compensation; provided that in case of disability such deduction shall be made by shortening the period during which compensation must be paid, and not by reducing the amount of the weekly payments under sections 15 and 16.

§ 19. Periodical payments.—The board, upon the application of either party, may in its discretion, having regard to the welfare of the employee

and the convenience of the employer, authorize compensation to be paid monthly or quarterly instead of weekly.

§ 20. Commutation of payments.—Whenever the board determines that it is for the best interest of all parties, the liability of the employer for compensation may, on application to the board by any party interested, be discharged in whole or in part by the payment of one or more lump sums to be fixed by the board.

§ 21. Trustee in case of lump sum payments.—Whenever for any reason the board deems it expedient, any lump sum which is to be paid as provided in section 20 shall be paid by the employer to some suitable person or corporation appointed by the board as trustee to administer or apply the same for the benefit of the person or persons entitled thereto in the manner provided by the board. The receipt of such trustee for the amount so paid shall discharge the employer or any one else who is liable therefor.

PART IV.—PROCEDURE IN OBTAINING COMPENSATION

§ 22. Medical examination.—After an injury and during the period of disability, the workman, if so requested by his employer, or ordered by the board, shall submit himself to examination, at reasonable times and places, to a duly qualified physician or surgeon designated and paid by the employer. The workman shall have the right to have a physician or surgeon designated and paid by himself present at such examination, which right, however, shall not be construed to deny to the employer's physician the right to visit the injured workman at all reasonable times and under all reasonable conditions during total disability. If a workman refuses to submit himself to or in any way obstructs such examination, his right to take or prosecute any proceeding under this act shall be suspended until such refusal or obstruction ceases, and no compensation shall be payable for the period during which such refusal or obstruction continues.

§ 23. Notice of injury and claim for compensation.—No proceedings under this act for compensation for an injury shall be maintained unless a notice of the injury shall have been given to the employer as soon as practicable after the happening thereof, and unless a claim for compensation with respect to such injury shall have been made within six months after the date of the injury; or, in the case of death, then within six months after such death, whether or not a claim had been made by the employee himself for compensation. Such notice and such claim may be given or made by any person claiming to be entitled to compensation or by some one on his behalf. If payments of compensation have been made voluntarily the making of a claim within said period shall not be required.

§ 24. Form of notice and claim.—Such notice and such claim shall be in writing, and such notice shall contain the name and address of the employee, and shall state in ordinary language the time, place, nature, and cause of the injury, and shall be signed by him or by a person on his behalf, or, in the event of his death, by any one or more of his dependents or by a person on their behalf. The notice may include the claim.

§ 25. Giving of notice and making of claim.—Any notice under this act shall be given to the employer, or, if the employer be a partnership, then to any one of the partners. If the employer be a corporation, then the notice may be given to any agent of the corporation upon whom process may be serv-

ed, or to any officer of the corporation, or any agent in charge of the business at the place where the injury occurred. Such notice shall be given by delivering it or by sending it by mail by registered letter addressed to the employer at his or its last known residence or place of business. The foregoing provisions shall apply to the making of a claim.

§ 26. **Sufficiency of notice.**—A notice given under the provisions of section 23 of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, nature, or cause of the injury, or otherwise, unless it is shown that the employer was in fact misled to his injury thereby. Want of notice or delay in giving notice shall not be a bar to proceedings under this act if it be shown that the employer, his agent or representative, had knowledge of the accident, or that the employer has not been prejudiced by such delay or want of notice.

§ 27. **Limitation of time as regards minors and insane.**—No limitation of time provided in this act shall run as against any person who is mentally incompetent or a minor dependent so long as he has no guardian.

§ 28. **Creation of Board.**—A board is hereby created to be known as the industrial accident board, consisting of three members to be appointed by the governor, one of whom shall be designated by the governor as chairman. Each member of the board shall hold office for six years except that when the board is first constituted the members shall be appointed for terms ending the thirty-first day of January, 1917, 1919 and 1921, respectively. Thereafter on or before the fifteenth day of January, biennially, one member shall be appointed for the full term of six years commencing on the first day of February, next following.

§ 29. **Salaries and expenses.**—The salaries and expenses of the board shall be paid by the state. The salary of the chairman shall be two thousand dollars per year, and the salary of the other members shall be fifteen hundred dollars per year each. The board may appoint a secretary at a salary of not more than twelve hundred dollars per year, and may remove him. The board shall be provided with offices in the capitol, or in some other suitable building in the city of Montpelier, in which its records shall be kept, and it shall also be provided with necessary office furniture, stationery, and other supplies. The board shall have a seal for the authentication of its orders, awards, and proceedings, upon which shall be inscribed the words, "Industrial Accident Board—Seal." The members of the board and its secretary shall be entitled to receive from the state their actual and necessary expenses while away from home on the exclusive business of the board, and salaries and expenses under this act shall be audited and paid in the manner prescribed for similar expenditures in other departments or branches of the state service.

§ 30. **Rules of Board—Witnesses—Blanks.**—The board may make rules not inconsistent with this act for carrying out the provisions of this act. Process and procedure under this act shall be as summary and simple as reasonably may be. The board, or any member thereof shall have the power to subpoena witnesses, administer oaths, and to examine such of the books and records of the parties to a proceeding as relate to the questions in dispute. The county court or a superior judge shall have power to enforce by proper proceedings the attendance and testimony of witnesses, and the production and examination of books, papers, and records, and, in the case of a corporation, the provisions of sections 4252 to 4256, inclusive [Public Statutes of Vermont],

shall apply. The board shall cause to be printed and furnished free of charge to any employer or employee such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act.

§ 31. Agreements.—If the employer and the injured employee reach an agreement in regard to compensation under this act, a memorandum of the agreement shall be filed with the board, and, if approved by it, thereupon the memorandum shall for all purposes be enforceable under the provisions of section 38, unless modified as provided in section 34.

Such agreements shall be approved by the board only when the terms conform to the provisions of this act.

§ 32. Hearing and award.—If the compensation is not settled by agreement, either party may apply to the industrial accident board for hearing and award in the premises; and said board shall set a time and place for hearing, and give at least six days' notice thereof to the parties. Unless otherwise agreed by the parties, such hearing shall be held in the town where the injury occurred, if within this state; and if the injury occurred outside the state, the board shall, unless the parties agree, designate some place within this state for such hearing. Said board shall allow a full trial, shall within six months from date of hearing make an award stating its conclusions of fact and of law, and shall forthwith send to each of the parties a copy of its award.

§ 33. Examination by physician.—When application is made to said board under the provisions of the preceding section, said board may appoint a duly qualified and impartial physician to examine the injured employee and to report to said board. The fee for such physician's services shall be five dollars, and traveling and hotel expenses, but the board may allow additional reasonable amounts in extraordinary cases. Said fees and expenses shall be paid by the state, on presentation of accounts approved by the board.

§ 34. Modification of awards and agreements.—On the application of any party on the grounds of a change in conditions, the board may at any time, but not oftener than once in six months, review any agreement or award, and on such review may make an award ending, diminishing, or increasing the compensation previously agreed upon or awarded subject to the maximum and minimum provided in this act, and shall state its conclusions of fact and rulings of law, and immediately send to the parties a copy of the award, but this section shall not apply to a commutation of payments under section 20.

§ 35. Finality of award.—An award of the board, in the absence of fraud, shall be final and conclusive between the parties except as provided in section 34, unless an appeal be taken therefrom, either to the county court or to the supreme court, as hereinafter provided.

§ 36. Appeals to county court.—Within ten days after a copy has been sent to each of the parties, either party may appeal to the county court of a county wherein a civil action between the parties would be triable. The provisions of sections 1652 and 1653 of the Public Statutes as to the time for entering and docketing such appeals and for the appellee's appearance, shall apply to such appeals. The superior judges shall, by general rules, provide for the procedure to be followed on such appeals, and either party shall be entitled to a trial by jury under such general rules as said judges may prescribe.

§ 37. Appeals to supreme court.—If no appeal is taken to the county court under the provisions of the preceding section within the time limited

therefor, either party may within five days thereafter appeal to the supreme court, whose jurisdiction shall be limited to a review of questions of law certified to said court by said board. Said court may render final judgment on such appeal and award execution, or may remand the cause to said board for further findings. Said court shall, by general rules, prescribe the procedure to be followed in case of such appeals.

§ 38. **Enforcement of award.**—Any party in interest may file in the county court for the county in which the injury occurred, or for the county of Washington, a certified copy of a decision of the board awarding compensation, from which no appeal has been taken within the time allowed therefor, or a certified copy of a memorandum of agreement approved by the board, whereupon said court shall render judgment in accordance therewith and notify the parties thereof. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by said court, except that there shall be no appeal therefrom.

§ 39. **Costs.**—If the industrial accident board, or any court before whom any proceedings are pending under this act, determines that such proceedings have been brought, prosecuted, or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who has so brought, prosecuted, or defended them.

§ 40. **General powers of Board.**—All questions arising under this act, if not settled by agreement of the parties interested therein with the approval of the board, shall, except as otherwise herein provided, be determined by the board. The decisions of the board shall be enforceable by the county court under the provisions of section 38. There shall be a right of appeal from decisions of the board as hereinbefore provided, but in no case shall such an appeal operate as a supersedeas or stay unless the board or the court to which the appeal is taken shall so order.

§ 41. **Revision of decrees.**—The county court rendering judgment, upon the filing with it of a certified copy of a decision of the industrial accident board ending, diminishing, or increasing compensation previously awarded, shall revoke or modify its prior judgment so that it will conform to said decision.

§ 42. **Injuries outside the state.**—If a workman who has been hired in this state receives personal injury by accident arising out of and in the course of such employment, he shall be entitled to compensation according to the law of this state even though such injury was received outside of this state.

If a workman who has been hired outside of this state is injured while engaged in his employer's business, and is entitled to compensation for such injury under the law of the state where he was hired, he shall be entitled to enforce against his employer his rights in this state if his rights are such that they can reasonably be determined and dealt with by the board and the court in this state.

PART V.—PREFERENCES AND ASSIGNMENTS

§ 43. **Preferences.**—All rights of compensation granted by this act shall have the same preference or priority against the assets of the employer as is allowed by section 2657 of the Public Statutes.

§ 44. **Assignments—Attorneys' fees.**—No claims for compensation under this act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors. Claims of attorneys and of physicians for services under this act shall be subject to the approval of the board.

PART VI.—SECURITY FOR COMPENSATION

§ 45. **Security for payment of compensation.**—Employers, but not including the state, county or the municipal bodies mentioned in section 5, shall secure compensation to their employees in one of the following ways:

(1) By insuring and keeping insured the payment of such compensation with any corporation authorized to transact the business of workmen's compensation insurance in this state, or

(2) By obtaining and keeping in force guarantee insurance with any company authorized to do such guarantee business within the state, or

(3) By depositing and maintaining with the state treasurer a surety bond or other security satisfactory to the industrial accident board, securing the payment by said employer of compensation according to the terms of this act, or (4) by satisfying the industrial board as to the financial responsibility of the employer to comply with the provisions of this act.

§ 46. **Notice of insurance.**—The employer shall forthwith file with the industrial accident board in form prescribed by it a notice of his insurance, together with a copy of the contract or policy of insurance.

§ 47. **Posting of notice regarding insurance.**—Every employer who has complied with section 45 of this act shall post and maintain in a conspicuous place or places in and about his place or places of business typewritten or printed notices in form prescribed by the board, stating the fact that he has complied with the law as to securing the payment of compensation to his employees and their dependents in accordance with the provisions of this act.

§ 48. **Effect of failure to secure compensation.**—If any employer shall be in default under section 45, for a period of thirty days, he may be enjoined by a superior judge, on notice and hearing, from carrying on his business while such default continues. The superior judge shall, by general rules, prescribe the procedure to be followed under the provisions of this section.

§ 49. **The insurance contract.**—Every policy of insurance and every guarantee contract covering the liability of the employer for compensation, shall cover the entire liability of the employer to his employees covered by the policy or contract, and also shall contain a provision setting forth the right of the employees to enforce in their own names either by at any time filing a separate claim or by at any time making the insurance carrier a party to the original claim, the liability of the insurance carrier in whole or in part for the payment of such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance carrier shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

§ 50. **Knowledge of employer to affect insurance carrier.**—Every such policy and contract shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this act, be jurisdiction of the

insurance carrier, and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions, or awards rendered against the employer for the payment of compensation under the provisions of this act.

§ 51. **Insolvency of employer not to release insurance carrier.**—Every such policy and contract shall contain a provision to the effect that the insolvency or bankruptcy of the employer and his discharge therein shall not relieve the insurance carrier from the payment of compensation for injuries or death sustained by an employee during the life of such policy or contract.

§ 52. **Cancellation of insurance contracts.**—No policy or contract of insurance or guaranty covering liability arising under this act shall be cancelled within the time limited in such contract for its expiration until at least ten days after notice of intention to cancel such contract, on a date specified in such notice, shall have been filed in the office of the industrial accident board, and also served on the employer. Such cancellation shall not affect the liability of an insurance carrier on account of an injury occurring prior to such cancellation.

§ 53. **Insurance by municipalities.**—Each city, town, or incorporated village and fire districts, which is liable to its employees for compensation, may insure with any authorized insurance carrier.

§ 54. **Employees not to pay for insurance.**—No agreement by an employee to pay any portion of the cost of mutual or other insurance maintained for or carried for the purpose of securing compensation as herein required shall be valid, except as provided in section 45 of this act; and any employer who makes a deduction for such purpose from the wages or salary of any employee entitled to the benefits of this act, except as provided in section 45 of this act, shall be fined not more than five hundred dollars.

PART VII.—REPORTS, DEFINITIONS, AND GENERAL PROVISIONS

§ 55. **Report of accidents by employers.**—Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within seventy-two hours, not counting Sundays and legal holidays, after the occurrence of an injury causing absence from work for one day or more, a report thereof shall be made in writing to the industrial accident board on blanks to be procured from the board for the purpose.

Upon the termination of the disability of the injured employee, the employer shall make a supplemental report upon blanks to be procured from the board for that purpose. If the disability extends beyond a period of sixty days, the employer shall report to the board at the end of such period that the injured employee is still disabled, and upon the termination of the disability shall file a final supplemental report as provided above.

The said reports shall contain the name and nature of the business of the employer, the situation of the establishment, the name, age, sex, wages, and occupation of the injured employee, and shall state the date and hour of the accident causing the injury, the nature and cause of the injury, and such other information as may be required by the board.

Any employer who refuses or neglects to make the report required by this section shall be fined not more than twenty-five dollars for each offense.

Within sixty days after the termination of the disability of the injured employee, the employer or other party liable to pay the compensation provided

for by this act shall file with the board a statement showing the total payments made or to be made for compensation and for medical services for such injured employee.

§ 56. **Interstate commerce.**—This act shall affect the liability of employers to employees engaged in interstate or foreign commerce or otherwise only so far as the same is permissible under the laws of the United States.

§ 57. **Reports of Industrial Accident Board.**—The board shall biennially report to the general assembly, giving a properly classified statement of the expenses of the board, together with any other matters which the board deems proper to report, including any recommendations it may desire to make.

§ 58. **Definitions.**—In this act, unless the context otherwise requires:

(a) "Employer" unless otherwise stated, includes any body of persons, corporate or unincorporated, public or private, and the legal representative of a deceased employer. It includes the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor, or for any other reason, is not the direct employer of the workmen there employed. If the employer is insured it includes his insurer so far as applicable.

(b) "Workman" is used as synonymous with "employee," and means any person who has entered into the employment of, or works under contract of service or apprenticeship with, an employer. It does not include a person whose employment is purely casual or not for the purpose of the employer's trade or business, or whose remuneration exceeds fifteen hundred dollars a year. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents as herein defined, if the context so requires, or, where the employee is a minor or incompetent, to his committee or guardian or next friend.

(c) "Injury" or "personal injury" includes death resulting from injury within two years.

(d) The words "personal injury by accident arising out of and in the course of such employment" shall include an injury caused by the wilful act of a third person directed against an employee because of his employment.

They shall not include a disease except as it shall result from the injury.

(e) "Employment," in the case of private employers, includes employment only in a trade or occupation which is carried on by the employer for the sake of pecuniary gain.

Public employment means employment by any of the public corporations mentioned in section 5.

It does not include the employment of public officials who are elected by popular vote or who receive salaries exceeding fifteen hundred dollars a year.

(f) The word "board," whenever used in this act, unless the context shows otherwise, shall be taken to mean the industrial accident board.

(g) "Partial disability." Diminished ability to obtain employment owing to disfigurement resulting from an injury may be held to constitute partial disability.

(h) "Wages" shall include the market value of board, lodging, fuel, and other advantages which can be estimated in money which the employee receives from the employer as a part of his remuneration. "Wages" shall not include any sums which the employer has paid to the employee to cover any special expenses entailed on him by the nature of his employment.

(i) "Insurance carrier" shall include corporations from any of which employers have obtained workmen's compensation insurance or guaranty insurance in accordance with the provisions of this act.

§ 59. **Same.**—As used in this act the term "child" includes step-children, adopted children, posthumous children, and acknowledged illegitimate children, but does not include married children unless dependent. The terms "brother" and "sister" includes step-brothers and step-sisters, half-brothers and half-sisters, and brothers and sisters by adoption, but do not include married brothers nor married sisters unless dependent. The term "grandchild" includes children of adopted children and children of step-children, but does not include step-children of children, step-children of step-children, step-children of adopted children, nor married grandchildren unless dependent. The term "parent" includes step-parents and parents by adoption. The term "grandparent" includes parents of parents by adoption, but does not include parents of step-parents, step-parents of parents, nor step-parents of step-parents.

§ 60. **Unconstitutional provisions.**—If any part or section of this act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the act as a whole, or any part thereof which can be given effect without the part so decided to be unconstitutional or invalid.

§ 61. **Penalties for false representations.**—If for the purpose of obtaining any benefit or payment under the provisions of this act, either for himself or for any other person, a person wilfully makes a false statement or representation, he shall be guilty of misdemeanor and liable to a fine of not exceeding one hundred dollars, and he shall forfeit all right to compensation under this act after conviction for such offense.

§ 62. **Prior injuries.**—The provisions of this act shall not apply to injuries sustained, or accidents which occur, prior to the taking effect hereof.

§ 63. **Rules of construction.**—(a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act.

(b) This act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

§ 64. **Title of Act.**—This act may be cited as the Vermont Workmen's Compensation Act.

§ 65. **Prior statutes—Repeal.**—No. 97 of the acts of 1910, is hereby repealed, and all other acts and parts of acts inconsistent with this act are hereby repealed.

§ 66. **Term of members of Board.**—The term of office of the members of the industrial board as provided for in this act, shall begin on the first day of May, 1915.

§ 67. **Time of taking effect.**—This act shall take effect on the first day of July, 1915; but as to sections 28, 29, 30, 66, and 67 this act shall take effect from its passage.

Approved April 1, 1915.

WASHINGTON

WORKMEN'S COMPENSATION ACT

Section

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WORKMEN'S COMPENSATION ACT

(Laws 1911, c. 74, with Amendments.)

An Act relating to the compensation of injured workmen in our industries, and the compensation to their dependents where such injuries result in death, creating an industrial insurance department, making an appropriation for its administration, providing for the creation and disbursement of funds for the compensation and care of workmen injured in hazardous employment, providing penalties for the non-observance of regulations for the prevention of such injuries and for violation of its provisions, asserting and exercising the police power in such cases, and, except in certain specified cases, abolishing the doctrine of negligence as a ground for recovery of damages against employers, and depriving the courts of jurisdiction of such controversies, and repealing section 6594, 6595 and 6596 of Remington & Ballinger's Annotated Codes and Statutes of Washington, relating to employes in factories, mills or workshops where machinery is used, actions for the recovery of damages and prescribing a punishment for violation thereof.

Be it enacted by the Legislature of the State of Washington:

§ 1. **Declaration of police power.**—The common law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state

depends upon its industries, and even more upon the welfare of its wage-worker. The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra hazardous work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this act provided.

§ 2. Enumeration of extra-hazardous works.—There is a hazard in all employment, but certain employments have come to be, and to be recognized as being, inherently constantly dangerous. This act is intended to apply to all such inherently hazardous works and occupations, and it is the purpose to embrace all of them, which are within the legislative jurisdiction of the state, in the following enumeration, and they are intended to be embraced within the term "extra hazardous" wherever used in this act, to-wit:

Factories, mills and workshops where machinery is used; printing, electrotyping, photo-engraving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gas works, water works, reduction works, breweries, elevators, wharfs, docks, dredges, smelters, powder works; laundries operated by power; quarries; engineering works; logging, lumbering and ship-building operations; logging, street and interurban railroads; buildings being constructed, repaired, moved or demolished; telegraph, telephone, electric light or power plants or lines, steam heating or power plants, steamboats, tugs, ferries and railroads. If there be or arise any extra hazardous occupation or work other than those hereinabove enumerated, it shall come under this act, and its rate of contribution to the accident fund hereinafter established, shall be, until fixed by legislation, determined by the department hereinafter created, upon the basis of the relation which the risk involved bears to the risks classified in section 4.

§ 3. Definitions.—In the sense of this act words employed mean as here stated, to-wit:

Factories mean undertakings in which the business of working at commodities is carried on with power-driven machinery, either in manufacture, repair or change, and shall include the premises, yard and plant of the concern.

Workshop means any plant, yard, premises, room or place wherein power-driven machinery is employed and manual labor is exercised by way of trade for gain or otherwise in or incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale or otherwise any article or part of article, machine or thing, over which premises, room or place the employer of the person working therein has the right of access or control.

Mill means any plant, premises, room or place where machinery is used, any process of machinery, changing, altering or repairing any article or commodity for sale or otherwise, together with the yards and premises which are a part of the plant, including elevators, warehouses and bunkers.

Mine means any mine where coal, clay, ore, mineral, gypsum or rock is dug or mined underground.

Quarry means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, gravel or rock is cut or taken for manufacturing, building or construction purposes.

Engineering work means any work of construction, improvement or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads, logging roads, interurban railroads, harbors, docks, canals; electric, steam or water-power plants; telegraph and telephone plants and lines; electric light or power lines, and includes any other work for the construction, alteration or repair of which machinery driven by mechanical power is used.

Except when otherwise expressly stated, employer means any person, body of persons, corporate or otherwise, and the legal personal representatives of a deceased employer, all while engaged in this State in any extra hazardous work.

Workman means every person in this state, who, after September 30, 1911, is engaged in the employment of an employer carrying on or conducting any of the industries scheduled or classified in section 4, whether by way of manual labor or otherwise, and whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer: Provided, however, That if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section; and if he take under this act, the cause of action against such other shall be assigned to the state for the benefit of the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the state may be prosecuted, or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

Any individual employer or any member or officer of any corporate employer who shall be carried upon the payroll at a salary or wage not less than the average salary or wage named in such payroll and who shall be injured, shall be entitled to the benefit of this act as and under the same circumstances as and subject to the same obligations as a workman.

Dependent means any of the following named relatives of a workman whose death results from any injury and who leaves surviving no widow, widower, or child under the age of sixteen years, viz.: Invalid child over the age of sixteen years, daughter, between sixteen and eighteen years of age, father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-sister, half-brother, niece, nephew, who, at the time of the accident, are dependent, in whole or in part, for their support upon the earnings of the workman. Except where otherwise provided by treaty, aliens other than father or mother, not residing within the United States at the time of the accident, are not included.

Beneficiary means a husband, wife, child or dependent of a workman, in whom shall vest a right to receive payment under this act.

Invalid means one who is physically or mentally incapacitated from earning.

The word "child," as used in this act, includes a posthumous child, a child legally adopted prior to the injury, and an illegitimate child legitimated prior to the injury.

The word injury or injured, as used in this act, refers only to an injury resulting from some fortuitous event as distinguished from the contraction of disease.

§ 4. **Schedule of contribution.**—Insomuch as industry should bear the greater portion of the burden of the cost of its accidents, each employer shall, prior to January 15th of each year, pay into the state treasury, in accordance with the following schedule, a sum equal to a percentage of his total payroll for that year, to-wit (the same being deemed the most accurate method of equitable distribution of burden in proportion to relative hazard):

CONSTRUCTION WORK

Tunnels; bridges; trestles; sub-aqueous works; ditches and canals (other than irrigation without blasting); dock excavations; fire escapes; sewers; house moving; house wrecking.....	.065
Iron, or steel frame structures or parts of structures.....	.065
Electric light or power plants or systems; telegraph or telephone systems; pile driving; steam railroads.....	.050
Steeple, towers or grain elevators, not metal framed; drydocks without excavation; jetties; breakwaters; chimneys; marine railways; water works or systems; electric railways with rock work or blasting; blasting; erecting fireproof doors or shutters.....	.050
Steam heating plants; tanks, water towers or windmills, not metal frames	.040
Shaft sinking.....	.060
Concrete buildings; freight or passenger elevators; fireproofing of buildings; galvanized iron or tin works; gas works, or systems; marble, stone or brick work; road making with blasting; roof work; safe moving; slate work; outside plumbing work; metal smokestacks or chimneys	.050
Excavations not otherwise specified; blast furnaces.....	.040
Street or other grading; cable or electric street railways without blasting; advertising signs; ornamental metal work in buildings.....	.035
Ship or boat building or wrecking with scaffolds; floating docks.....	.045
Carpenter work not otherwise specified.....	.035
Installation of steam boilers or engines; placing wire in conduits; installing dynamos; putting up belts for machinery; marble, stone or tile setting, inside work; mantel setting; metal ceiling work; mill or shipwrighting; painting of buildings or structures; installation of automatic sprinkler; ship or boat rigging; concrete laying in floors, foundations or street paving; asphalt laying; covering steam pipes or boilers, installation of machinery not otherwise specified.....	.030

Drilling wells; installing electrical apparatus or fire alarm systems in buildings; house heating or ventilating systems; glass setting; building hot houses; lathing; paper hanging; plastering; inside plumbing; wooden stair building; road making.....	.020
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OPERATION (INCLUDING REPAIR WORK) OF

(All combinations of material take the higher rate when not otherwise provided.)

Logging railroads; railroads; dredges; interurban electric railroads using third rail system; dry or floating docks.....	.050
Electric light or power plants; interurban electric railroads not using third rail system; quarries.....	.040
Street railways, all employes; telegraph or telephone systems; stone crushing; blasting furnaces; smelters; coal mines; gas works; steamboats; tugs; ferries.....	.030
Mines, other than coal; steam heating or power plants.....	.025
Grain elevators; laundries; water works; paper or pulp mills; garbage works	.020

FABRIQUES USING POWER DRIVEN MACHINERY

Stamping tin or metal.....	.045
Bridge work; railroad car or locomotive making or repairing; cooperage; logging with or without machinery; saw mills; shingle mills; staves; veneer; box; lath; packing cases; sash, door or blinds; barrel, keg, pail; basket; tub; wooden ware or wooden fibre ware; rolling mills; making steam shovels or dredges; tanks; water towers; asphalt; building material not otherwise specified; fertilizer; cement; stone with or without machinery; kindling wood; masts and spars with or without machinery; canneries, metal stamping extra; creosoting works; pile treating works.....	.025
Excelsior, iron, steel, copper, zinc, brass or lead articles or wares not otherwise specified; working in wood not otherwise specified; hardware; tile; brick; terra cotta; fire clay; pottery; earthen ware; porcelain ware; peat fuel; brickettes.....	.020
Breweries; bottling works; boiler works; foundries; machine shops not otherwise specified.....	.020
Cordage; working in foodstuffs, including oils, fruits and vegetables; working in wood, cloth, leather, paper, broom, brush, rubber or textiles not otherwise specified.....	.015
Making jewelry, soap, tallow, lard, grease, condensed milk.....	.015
Creameries; printing; electrotyping, photo-engraving; engraving; lithographing	.015

MISCELLANEOUS WORK

Stevedoring; longshoring.....	.030
Operating stock yards, with or without railroad entry; packing houses	.025
Wharf operation; artificial ice, refrigerating or cold storage plants; tanneries; electric systems not otherwise specified.....	.020
Theater stage employes.....	.015
Fire works manufacturing.....	.050
Powder works.....	.100

The application of this act as between employers and workmen shall date from and include the first day of October, 1911. The payment for 1911 shall be made prior to the day last named, and shall be preliminarily collected upon the payroll of the last preceding three months of operation. At the end of each year an adjustment of accounts shall be made upon the basis of the actual payroll. Any shortage shall be made good on or before February 1st, following. Every employer who shall enter into business at any intermediate day, or who shall resume operations in any work or plant after the final adjustment of his payroll in connection therewith, shall, before so commencing or resuming operations, as the case may be, notify the Commission of such fact, accompanying such notification with an estimate of his payroll for the initial year or portion thereof, and shall make payment of the premium on such estimated payroll for the first three months of operations. An adjustment upon such payroll shall be made as in other cases. Every employer who shall fail to furnish an estimated payroll and make payment as above provided, shall be liable to a penalty in three times the amount of the premium on such payroll, to be collected in a civil action in the name of the state, and paid into the accident fund. The Commission may waive the whole or any part of such penalty.

For the purpose of such payments accounts shall be kept with each industry in accordance with the classification herein provided and no class shall be liable for the depletion of the accident fund from accidents happening in any other class. Each class shall meet and be liable for the accidents occurring in such class. There shall be collected from each class as an initial payment into the accident fund as above specified on or before the 1st day of October, 1911, one-fourth of the premium of the next succeeding year, and one-twelfth thereof at the close of each month after December, 1911: Provided, Any class having sufficient funds credited to its account at the end of the first three months or any month thereafter, to meet the requirements of the accident fund, that class shall not be called upon for such month. In case of accidents occurring in such class after lapsed payment or payments said class shall pay the said lapsed or deferred payments commencing at the first lapsed payment, as may be necessary to meet such requirements of the accident fund. The fund thereby created shall be termed the "accident fund" which shall be devoted exclusively to the purpose specified for it in this act.

In that the intent is that the fund created under this section shall ultimately become neither more nor less than self-supporting, exclusive of the expense of administration, the rates named in this section are subject to future adjustment by the industrial insurance department, in accordance with any relative increase or decrease in hazard shown by experience, and if in the judgment of the industrial insurance department the moneys paid into the fund of any class or classes shall be insufficient to properly and safely distribute the burden of accidents occurring therein, the department may divide, rearrange or consolidate such class or classes, making such adjustment or transfer of funds as it may deem proper.

It shall be unlawful for the employer to deduct or obtain any part of the premium required by this section to be by him paid from the wages or earnings of his workmen or any of them, and the making or attempting to make any such deduction shall be a gross misdemeanor. If, after this act shall have come into operation, it is shown by experience under the act, because of poor or careless management, any establishment or work is unduly dan-

gerous in comparison with other like establishments or works, the department may advance its classification of risks and premium rates in proportion to the undue hazard. In accordance with the same principle, any such increase in classification or premium rate, shall be subject to restoration to the schedule rate. Any such change in classification of risks or premium rates, or any change caused by change in the class of work, occurring during the year shall, at the time of the annual adjustment be adjusted by the department in proportion to its duration in accordance with the schedule of this section. If, at the end of any year, it shall be seen that the contribution to the accident fund by any class of industry shall be less than the drain upon the fund on account of that class, the deficiency shall be made good to the fund on the 1st day of February of the following year by the employers of that class in proportion to their respective payments for the past year.

For the purpose of such payment and making good of deficit the particular classes of industry shall be as follows:

CONSTRUCTION WORK

Class 1. Tunnels; sewer; shaft sinking; drilling wells.

Class 2. Bridges; mill wrighting; trestles; steeples, towers or grain elevators not metal framed; tanks; water towers, windmills not metal framed.

Class 3. Sub-aqueous works; canal other than irrigation or docks with or without blasting; pile driving; jetties; breakwaters; marine railways.

Class 4. House moving; house wrecking; safe moving.

Class 5. Iron or steel frame structures or parts of structures; fire escapes; erecting fireproof doors or shutters; blast furnaces; concrete chimneys; freight or passenger elevators; fireproofing of buildings; galvanized iron or tin work; marble, stone or brick work; roof work; slate work; plumbing work; metal smokestacks or chimneys; advertising signs; ornamental metal work in buildings; carpenter work not otherwise specified; marble, stone or tile setting; mantel setting; metal ceiling work; painting of buildings or structures; concrete laying in floors or foundations; glass setting; building hot houses; lathing; paper hanging; plastering; wooden stair building.

Class 6. Electric light and power plants or systems, telegraph or telephone systems; cable or electric railways with or without rock work or blasting; water works or systems; steam heating plants; gas works or systems; installation of steam boilers or engines; placing wires in conduits; installing dynamos; putting up belts for machinery; installation of automatic sprinklers; covering steam pipes or boilers; installation of machinery not otherwise specified; installing electrical apparatus or fire alarm systems in buildings; house heating or ventilating systems.

Class 7. Steam railroads; logging railroads.

Class 8. Road making; street or other grading; concrete laying in street paving; asphalt laying.

Class 9. Ship or boat building with scaffold; ship wrighting; ship or boat rigging; floating docks.

OPERATIONS (INCLUDING REPAIR WORK) OF

Class 10. Logging; saw mills; shingle mills; lath mills; masts and spars with or without machinery.

Class 11. [Omitted by the legislature.]

Class 12. Dredges; dry or floating docks.

Class 13. Electric light or power plant or systems; steam heat or power plants or systems; electric systems not otherwise specified.

Class 14. Street railways.

Class 15. Telegraph systems; telephone systems.

Class 16. Coal mines.

Class 17. Quarries; stone crushing; mines other than coal.

Class 18. Blast furnaces; smelters; rolling mills.

Class 19. Gas works.

Class 20. Steamboats; tugs; ferries.

Class 21. Grain elevators.

Class 22. Laundries.

Class 23. Water works.

Class 24. Paper or pulp mills.

Class 25. Garbage works; fertilizer.

FACTORIES (USING POWER-DRIVEN MACHINERY)

Class 26. Stamping tin or metal.

Class 27. Bridge work; making steam shovels or dredges; tanks; water towers.

Class 28. Railroad car or locomotive making or repairing.

Class 29. Cooperage; staves; veneer; box; packing cases; sash, door or blinds; barrel; keg; pail; basket; tub; wood ware or wood fibre ware; kindling wood; excelsior; working in wood not otherwise specified.

Class 30. Asphalt.

Class 31. Cement; stone with or without machinery; building material not otherwise specified.

Class 32. Canneries of fruits or vegetables.

Class 33. Canneries of fish or meat products.

Class 34. Iron, steel, copper, zinc, brass or lead articles in wares; hardware; boiler works; foundries; machine shops not otherwise specified.

Class 35. Tile; brick; terra cotta; fire clay; pottery; earthenware; porcelain ware.

Class 36. Peat fuel; brickettes.

Class 37. Breweries; bottling works.

Class 38. Cordage; working in wool, cloth, leather, paper, brush, rubber or textile not otherwise specified.

Class 39. Working in foodstuffs, including oils, fruits, vegetables.

Class 40. Condensed milk; creameries.

Class 41. Printing; electrotyping; photo-engraving; engraving; lithographing; making jewelry.

Class 42. Stevedoring; longshoring; wharf operation.

Class 43. Stock yards; packing houses; making soap, tallow, lard, grease; tanneries.

Class 44. Artificial ice, refrigerating or cold storage plants.

Class 45. Theater stage employes.

Class 46. Fireworks manufacturing; powder works.

Class 47. Creosoting works; pile treating works.

If a single establishment or work comprises several occupations listed in this section in different risk classes, the premium shall be computed according to the payroll of each occupation if clearly separable; otherwise an aver-

age rate of premium shall be charged for the entire establishment, taking into consideration the number of employes and the relative hazards. In computing the payroll the entire compensation received by every workman employed in extra hazardous employment shall be included, whether it be in the form of salary, wage, piece work, overtime, or any allowance in the way of profit-sharing, premium or otherwise, and whether payable in money, board, or otherwise.

§ 5. **Schedule of awards.**—Each workman who shall be injured whether upon the premises or at the plant, or, he being in the course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.

COMPENSATION SCHEDULE

(a) Where death results from the injury the expenses of burial shall be paid in all cases, not to exceed \$75.00 in any case, and,

(1) If the workman leaves a widow or invalid widow, a monthly payment of \$20.00 shall be made throughout the life of the surviving spouse, to cease at the end of the month in which remarriage shall occur; and the surviving spouse shall also receive \$5.00 per month for each child of the deceased under the age of sixteen years at time of the occurrence of the injury until such minor child shall reach the age of sixteen years, but the total monthly payment under this paragraph (1) of subdivision (a) shall not exceed \$35.00. Upon remarriage of a widow she shall receive, once and for all, a lump sum equal to twelve times her monthly allowance, viz., the sum of \$240.00, but the monthly payment for the child or children shall continue as before.

(2) If the workman leaves no wife or husband, but a child or children under the age of sixteen years, a monthly payment of \$10.00 shall be made to each such child until such child shall reach the age of sixteen years, but the total monthly payment shall not exceed \$35.00, and any deficit shall be deducted proportionately among the beneficiaries.

(3) If the workman leaves no widow, widower or child under the age of sixteen years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty per cent. of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed \$20.00 per month. If any dependent is under the age of sixteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent shall reach the age of sixteen years. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

If the workman is under the age of twenty-one years and unmarried at the time of his death, the parents or parent of the workman shall receive \$20.00 per month for each month after his death until the time at which he would have arrived at the age of twenty-one years.

(4) In the event a surviving spouse receiving monthly payments shall die, leaving a child or children under the age of sixteen years, the sum he or she shall be receiving on account of such child or children shall be thereafter, until such child shall arrive at the age of sixteen years, paid to the child increased 100 per cent., but the total to all children shall not exceed the sum of \$35.00 per month.

(b) Permanent total disability means the loss of both legs or both arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the workman from performing any work at any gainful occupation.

When permanent total disability results from the injury the workman shall receive monthly during the period of such disability:

(1) If unmarried at the time of the injury, the sum of \$20.00.

(2) If the workman have a wife or invalid husband, but no child under the age of sixteen years, the sum of \$25.00. If the husband is not an invalid, the monthly payment of \$25.00 shall be reduced to \$15.00.

(3) If the workman have a wife or husband and a child or children under the age of sixteen years, or being a widow or widower, have any such child or children, the monthly payment provided in the preceding paragraph shall be increased by five dollars for each such child until such child shall arrive at the age of sixteen years, but the total monthly payment shall not exceed thirty-five dollars.

(c) If the injured workman die during the period of permanent total disability, whatever the cause of death, leaving a widow, invalid widower or child under the age of sixteen years, the surviving widow or invalid widower shall receive twenty dollars per month until death or remarriage, to be increased five dollars per month for each child under the age of sixteen years until such child shall arrive at the age of sixteen years; but if such child is or shall be without father or mother, such child shall receive ten dollars per month until arriving at the age of sixteen years. The total combined monthly payment under this paragraph shall in no case exceed thirty-five dollars. Upon remarriage the payments on account of a child or children shall continue as before to the child or children.

(d) When the total disability is only temporary, the schedule of payment contained in paragraphs (1), (2) and (3) of the foregoing subdivision (b) shall apply so long as the total disability shall continue, increased 50 per cent. for the first six months of such continuance, but in no case shall the increase operate to make the monthly payment exceed sixty per cent. of the monthly wage (the daily wage multiplied by twenty-six) the workman was receiving at the time of his injury. As soon as recovery is so complete that the present earning power of the workman, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable out of the accident fund unless the loss of earning power shall exceed five per cent.

(e) For every case of injury resulting in death or permanent total disability it shall be the duty of the department to forthwith notify the State Treasurer, and he shall set apart out of the accident fund a sum of money for the case, to be known as the estimated lump value of the monthly pay-

ments provided for it, to be calculated upon the theory that a monthly payment of twenty dollars, to a person thirty years of age, is equal to a lump sum payment, according to the expectancy of life as fixed by the American Mortality Table, of four thousand dollars, but the total in no case to exceed the sum of four thousand dollars. The State Treasurer shall invest said sum at interest in the class of securities provided by law for the investment of the permanent school fund, and out of the same and its earnings shall be paid the monthly installment and any lump sum payment then or thereafter arranged for the case. Any deficiency shall be made good out of, and any balance or overplus shall revert to the accident fund. The State Treasurer shall keep accurate account of all such investments of the accident fund, and may borrow from the main fund to meet monthly payments pending conversion into cash of any security, and in such case shall repay such temporary loan out of the cash realized from the security.

(f) Permanent partial disability means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments are severed, or any other injury known in surgery to be permanent partial disability. For any permanent partial disability resulting from an injury, the workman shall receive compensation in a lump sum in an amount equal to the extent of the injury, to be decided in the first instance by the department, but not in any case to exceed the sum of \$1,500. The loss of one major arm at or above the elbow shall be deemed the maximum permanent partial disability. Compensation for any other permanent partial disability shall be in the proportion which the extent of such disability shall bear to the said maximum. If the injured workman be under the age of twenty-one years and unmarried, the parents or parent shall also receive a lump sum payment equal to ten per cent. of the amount awarded the minor workman.

(g) Should a further accident occur to a workman already receiving a monthly payment under this section for a temporary disability, or who has been previously the recipient of a lump sum payment under this act, his future compensation shall be adjusted according to the other provisions of this section and with regard to the combined effect of his injuries, and his past receipt of money under this act.

(h) If aggravation, diminution or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated in any case the department may, upon the application of the beneficiary or upon its own motion, readjust for future application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payments.

(i) A husband or wife of an injured workman, living in a state of abandonment for more than one year at the time of the injury or subsequently, shall not be a beneficiary under this act.

(j) If a beneficiary shall reside or remove out of the state the department may, in its discretion, convert any monthly payments provided for such case into a lump sum payment (not in any case to exceed \$4,000.00) upon the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of \$20.00 to a person thirty years of age is worth \$4,000.00, or, with the consent of the beneficiary, for a smaller sum.

(k) Any court review under this section shall be initiated in the county

where the workman resides or resided at the time of the injury, or in which the injury occurred.

§ 6. Intentional injuries—Status of minors.—If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death, neither the workman nor the widow, widower, child or dependent of the workman shall receive any payment whatsoever out of the accident fund. If injury or death result to a workman from the deliberate intention of his employer to produce such injury or death, the workman, the widow, widower, child or dependent of the workman shall have the privilege to take under this act, and also have cause of action against the employer, as if this act had not been enacted, for any excess of damages over the amount received or receivable under this act.

A minor working at an age legally permitted under the laws of this state shall be deemed sui juris for the purpose of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman except as expressly provided in this act, but in the event of a lump sum payment becoming due under this act to such minor workman, the management of the sum shall be within the probate jurisdiction of the courts the same as other property of minors.

§ 7. Conversion into lump sum payment.—In case of death or permanent total disability the monthly payment may be converted, in whole or in part, into a lump sum payment (not in any case to exceed \$4,000.00), on the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of \$20.00 to a person thirty years of age is worth the sum of \$4,000.00, in which event the monthly payment shall cease in whole or in part accordingly or proportionately. Such conversion may only be made after the happening of the injury and upon the written application of the beneficiary (in case of minor children, the application may be by either parent) to the department, and shall rest in the discretion of the department. Within the rule aforesaid the amount and value of the lump sum payment may be agreed upon between the department and the beneficiary.

§ 8. Defaulting employers.—If any employer shall default in any payment to the accident fund hereinbefore in this act required, the sum due shall be collected by action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. In respect to any injury happening to any of his workmen during the period of any default in the payment of any premium under section 6604-4 of Remington & Ballinger's Annotated Codes and Statutes of Washington, the defaulting employer shall not, if such default be after demand for payment, be entitled to the benefits of this act, but shall be liable to suit by the injured workman (or the husband, wife, child or dependent of such workman in case death result from the accident), as he would have been prior to the passage of this act. In any suit brought by an employé it shall not be necessary to plead or prove that a demand for payment of any premium has been made by the Commission.

All delinquent payments due the accident fund as herein required shall bear interest at the rate of twelve per cent. per annum from the date of delinquency, and in all cases of insolvency, assignment for the benefit of creditors of bankruptcy, the claim of the state for premiums due herein shall be

a claim prior to all other claims except taxes. All actions for the recovery of such premiums shall be brought in the superior court, and in any recovery by action instituted for the collection of such payments, a reasonable attorney's fee shall be allowed as costs of suit.

In any action or proceeding brought for the recovery of premiums due upon the payroll of any employer, the certificate of the industrial insurance department that an audit has been made of the payroll of such employer pursuant to the direction of the department, and of the amount of such payroll for the period stated in the certificate, shall be prima facie evidence of such fact.

In case the recovery actually collected in such suit shall equal or exceed the compensation to which the plaintiff therein would be entitled under this act, the plaintiff shall not be paid anything out of the accident fund; if the said amount shall be less than such compensation under this act, the accident fund shall contribute the amount of the deficiency. The person so entitled under the provisions of this section to sue shall have the choice (to be exercised before suit) of proceeding by suit or taking under this act. If such person shall take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the accident fund. In any suit brought upon such cause of action the defense of fellow servant and assumption of risk shall be inadmissible, and the doctrine of comparative negligence shall obtain. Any such case of action assigned to the state may be prosecuted or compromised by the department in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

§ 9. Employer's responsibility for safeguard.—If any workman shall be injured because of the absence of any safeguard or protection required to be provided or maintained by, or pursuant to, any statute or ordinance, or any departmental regulation under any statute, or be, at the time of the injury, of less than the maximum age prescribed by law for the employment of a minor in the occupation in which he shall be engaged when injured, the employer shall, within ten days after demand therefor by the department, pay into the accident fund, in addition to the same required by section 4 to be paid:

(a) In case the consequent payment to the workman out of the accident fund be a lump sum, a sum equal to 50 per cent. of that amount.

(b) In case the consequent payment to the workman be payable in monthly payments, a sum equal to 50 per cent. of the lump value of such monthly payment, estimated in accordance with the rule stated in section 7.

The foregoing provisions of this act shall not apply to the employer if the absence of such guard or protection be due to the removal thereof by the injured workman himself or with his knowledge by any of his fellow workmen, unless such removal be by order or direction of the employer or superintendent or foreman of the employer, or any one placed by the employer in control or direction of such workman. If the removal of such guard or protection be by the workman himself or with his consent by any of his fellow workmen, unless done by order or direction of the employer or the superintendent or foreman of the employer, or any one placed by the employer in control, or direction of such workman, the schedule of

compensation provided in section 5 shall be reduced 10 per cent. for the individual case of such workman.

§ 10. Exemption of awards.—No money paid or payable under this act out of the accident fund shall, prior to issuance and delivery of the warrant therefor, be capable of being assigned, charged, nor ever be taken in execution or attached or garnished, nor shall the same pass to any other person by operation of law. Any such assignments or charge will be void.

§ 11. Non-waiver of Act by contract.—No employer or workman shall exempt himself from the burden or waive the benefits of this act by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be pro tanto void.

§ 12. Filing claim for compensation.—(a) Where a workman is entitled to compensation under this act he shall file with the department, his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this act and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman.

(b) Where death results from injury the parties entitled to compensation under this act, or some one in their behalf, shall make application for the same to the department, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this act, certificates of attending physician, if any, and such other proof as required by the rules of the department.

(c) If change of circumstances warrant an increase or rearrangement of compensation, like application shall be made therefor. No increase or rearrangement shall be operative for any period prior to application therefor.

(d) No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the right thereto accrued.

§ 12a. Physicians required to testify.—In all hearings, actions or proceedings before the Commission, or before any court on appeal from the Commission, any physician having theretofore examined or treated the claimant may be required to testify fully regarding such examination or treatment, and shall not be exempt from so testifying by reason of the relation of physician to patient.

§ 13. Workman must submit to medical examination.—Any workman entitled to receive compensation under this act is required, if requested by the department, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman and as may be provided by the rules of the department. If the workman refuses to submit to any such examination, or obstructs the same, his rights to monthly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period; or, if any injured workman shall persist in unsanitary or injurious practices, which tend to imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to his recovery, the Commission may reduce or suspend the compensation of such workman.

§ 14. Report of accident.—Whenever any accident occurs to any workman it shall be the duty of such workman or some one in his behalf to forthwith report such accident to his employer, superintendent or foreman in

charge of the work, and of the employer to at once report such accident and the injury resulting therefrom to the department and also to any local representative of the department.

§ 15. Inspection of employers' books.—The books, records and payrolls of the employer pertinent to the administration of this act shall always be open to inspection by the department or its traveling auditor, agent, or assistant, for the purpose of ascertaining the correctness of the payroll, the men employed, and such other information as may be necessary for the department and its management under this act. Refusal on the part of the employer to submit said books, records and payrolls for such inspection to any member of the Commission, or any assistant presenting written authority from the Commission, shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the state and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor.

§ 16. Penalty for misrepresentation as to payroll.—Any employer who shall misrepresent to the department the amount of payroll upon which the premium under this act is based shall be liable to the state in ten times the amount of the difference in premium paid and the amount the employer should have paid. The liability to the state under this section shall be enforced in a civil action in the name of the state. All sums collected under this section shall be paid into the accident fund.

§ 17. Public and contract work.—Whenever the state, county, any municipal corporation or other taxing district shall engage in any extra hazardous work in which workmen are employed for wages, this act shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the state, county, municipality or other taxing district. If said work is being done by contract, the payroll of the contractor and the sub-contractor shall be the basis of computation, and in the case of contract work consuming less than one year in performance the required payment into the accident fund shall be based upon the total payroll. The contractor and any sub-contractor shall be subject to the provisions of the act, and the state for its general fund, the county, municipal corporation or other taxing district shall be entitled to collect from the contractor the full amount payable to the accident fund, and the contractor, in turn shall be entitled to collect from the sub-contractor his proportionate amount of the payment. The provisions of this section shall apply to all extra hazardous work done by contract, except that in private work the contractor shall be responsible, primarily and directly, to the accident fund for the proper percentage of the total payroll of the work and the owner of the property affected by the contract shall be surety for such payments. Whenever and so long as, by state law, city charter or municipal ordinance, provision is made for municipal employes injured in the course of employment, such employes shall not be entitled to the benefits of this act and shall not be included in the payroll of the municipality under this act.

§ 18. Interstate commerce.—The provisions of this act shall apply to employers and workmen engaged in intrastate and also in interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the Congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce,

except that any such employer and any of his workmen working only in this state may, with the approval of the department, and so far as not forbidden by any act of Congress, voluntarily accept the provisions of this act by filing written acceptances with the department. Such acceptances, when filed with and approved by the department, shall subject the acceptors irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Payment of premiums shall be on the basis of the payroll of the workmen who accept as aforesaid.

§ 19. Elective adoption of Act.—Any employer and his employes engaged in works not extra hazardous may, by their joint election, filed with the department, accept the provisions of this act, and such acceptances, when approved by the department, shall subject them irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Ninety per cent. of the minimum rate specified in section 4 shall be applicable to such case until otherwise provided by law.

§ 20. Court review.—Any employer, workman, beneficiary, or person feeling aggrieved at any decision of the department affecting his interests under this act may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county of his residence (except as otherwise provided in subdivision (k) of section numbered 5) in so far as such decision rests upon questions of fact; or on the proper application of the provisions of this act, it being the intent that matters resting in the discretion of the department shall not be subject to review. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal shall have been served by mail or personally upon some member of the Commission within twenty days following the rendition of the decision appealed from and communication thereof to the person affected thereby. No bond shall be required, except that an appeal by the employer from a decision of the department under section 9 shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay. The calling of a jury shall rest in the discretion of the court except that in cases arising under sections 9, 15 and 16 either party shall be entitled to a jury trial upon demand. It shall be unlawful for any attorney engaged in any such appeal to charge or receive any fee therein in excess of a reasonable fee, to be fixed by the court in the case, and, if the decision of the department shall be reversed or modified, such fee and the fees of medical and other witnesses and the costs shall be payable out of the administration fund, if the accident fund is affected by the litigation. In other respects the practice in civil cases shall apply. Appeal shall lie from the judgment of the superior court as in other civil cases. The Attorney General shall be the legal adviser of the department and shall represent it in all proceedings, whenever so requested by any of the Commissioners. In all court proceedings under or pursuant to this act the decision of the department shall be *prima facie* correct, and the burden of proof shall be upon the party attacking the same.

§ 21. Creation of department.—The administration of this act is imposed upon a department, to be known as the Industrial Insurance Department, to consist of three Commissioners to be appointed by the Governor.

One of them shall hold office for the first two years, another for the first four years, and another for the first six years, following the passage and approval of this act. Thereafter the term shall be six years. Each Commissioner shall hold until his successor shall be appointed and shall have qualified. A decision of any question arising under this act concurred in by two of the Commissioners shall be the decision of the department. The Governor may at any time remove any Commissioner from office in his discretion, but within ten days following any such removal the Governor shall file in the office of the Secretary of State a statement of his reasons therefor. The Commission shall elect one of their members as chairman. The main office of the Commission shall be at the state capitol, but branch offices may be established at other places in the state. Each member of the Commission shall have power to issue subpoenas requiring the attendance of witnesses and the production of books and documents.

§ 21a. Attendance of witnesses and examination of records.—The superior court shall have power to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records before the Industrial Insurance Department.

§ 22. Salary of Commissioners.—The salary of each of the Commissioners shall be thirty-six hundred dollars per annum, and he shall be allowed his actual and necessary traveling and incidental expenses; and any assistant to the Commissioners shall be paid for each full day's service rendered by him, his actual and necessary traveling expenses and such compensation as the Commission may deem proper, not to exceed six dollars per day to an auditor, or five dollars per day to any other assistant.

§ 23. Deputies and assistants.—The Commissioners may appoint a sufficient number of auditors and assistants to aid them in the administration of this act, at an expense not to exceed \$5,000.00 per month. They may employ one or more physicians in each county for the purpose of official medical examinations, whose compensation shall be limited to five dollars for each examination and report therein. They may procure such record books as they may deem necessary for the record of the financial transactions and statistical data of the department, and the necessary documents, forms and blanks. They may establish and require all employers to install and maintain an uniform form of payroll.

§ 24. Conduct, management and supervision of department.—The Commission shall, in accordance with the provisions of this act:

1. Establish and promulgate rules governing the administration of this act.
2. Ascertain and establish the amounts to be paid into and out of the accident fund.
3. Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency.
4. Supervise the medical, surgical and hospital treatment to the intent that same may be in all cases suitable and wholesome.
5. Issue proper receipts for moneys received, and certificates for benefits accrued and accruing.
6. Investigate the cause of all serious injuries and report to the Governor from time to time any violations or laxity in performance of protective statutes or regulations coming under the observation of the department.
7. Compile and preserve statistics showing the number of accidents occur-

ring in the establishment or works of each employer, the liabilities and expenditures of the accident fund on account of, and the premiums collected from the same, and hospital charges and expenses.

8. Make annual report to the Governor (one of them not more than sixty nor less than thirty days prior to each regular session of the legislature) of the workings of the department, and showing the financial status and the outstanding obligations of the accident fund, and the statistics aforesaid.

§ 24a. Penalty for failure to comply with rules of the department.—Every person, firm or corporation who shall violate or fail to obey, observe or comply with any rule of the department promulgated under authority of this act, shall be subject to a penalty of not to exceed two hundred and fifty dollars (\$250). Such penalty may be recovered in a civil action in the name of the state, and shall be paid into the accident fund.

§ 25. (Repealed.)

§ 26. Disbursement of funds.—Disbursement out of the funds shall be made only upon warrants drawn by the State Auditor upon vouchers therefor transmitted to him by the department and audited by him. The State Treasurer shall pay every warrant out of the fund upon which it is drawn. If, at any time, there shall not be sufficient money in the fund on which any such warrant shall have been drawn wherewith to pay the same, the employer on account of whose workman it was that the warrant was drawn shall pay the same, and he shall be credited upon his next following contribution to such fund the amount so paid with interest thereon at the legal rate from the date of such payment to the date such next following contribution became payable, and if the amount of the credit shall exceed the amount of the contribution, he shall have a warrant upon the same fund for the excess, and if any such warrant shall not be so paid, it shall remain, nevertheless, payable out of the fund. The State Treasurer shall to such extent as shall appear to him to be advisable keep the moneys of the unsegregated portion of the accident fund invested at interest in the class of securities provided by law for the investment of the permanent school fund. The State Treasurer shall be liable on his official bond for the safe custody of the moneys and securities of the accident fund, but all the provisions of an act approved February 21, 1907, entitled "An act to provide for state depositories and to regulate the deposits of state moneys therein," shall be applied to said moneys and the handling thereof by the State Treasurer.

§ 27. Test of invalidity of Act.—If any employer shall be adjudicated to be outside the lawful scope of this act, the act shall not apply to him or his workmen, or if any workman shall be adjudicated to be outside the lawful scope of this act because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of section 4 of this act for the creation of the accident fund, or the provisions of this act making the compensation to the workmen provided in it exclusive of any other remedy on the part of the workman shall be held invalid the entire act shall be thereby invalidated except the provisions of section 31, and an accounting according to the justice of the case shall be had of moneys received. In other respects an adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any other part thereof.

§ 28. **Statute of limitations saved.**—If the provisions of this act relative to compensation for injuries to or death of workmen become invalid because of any adjudication, or be repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this act by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of the invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death: Provided, That such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the accident fund to the workman on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the accident fund the payment provided by section 4, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited, but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed.

§ 29. **Appropriations.**—There is hereby appropriated out of the state treasury the sum of one hundred and fifty thousand dollars, or so much thereof as may be necessary, to be known as the administration fund, out of which the salaries, traveling and office expenses of the department shall be paid, and also all other expenses of the administration of the accident fund; and there is hereby appropriated out of the accident fund for the purpose to which said fund is applicable the sum of \$1,500,000, or so much thereof as shall be necessary for the purposes of this act.

§ 30. **Safeguard regulations preserved.**—Nothing in this act contained shall repeal any existing law providing for the installation or maintenance of any device, means or method for the prevention of accidents in extra hazardous work or for a penalty or punishment for failure to install or maintain any such protective device, means or methods, but sections 8, 9 and 10 of the act approved March 6, 1905, entitled "An act providing for the protection and health of employes in factories, mills or workshops, where machinery is used, and providing for suits to recover damages sustained by the violation thereof, and prescribing a punishment for the violation thereof and repealing an act entitled 'An act providing for the protection of employes in factories, mills or workshops where machinery is used, and providing for the punishment of the violation thereof, approved March 6, 1903,' and repealing all other acts or parts of acts in conflict herewith," are hereby repealed, except as to any cause of action which shall have accrued thereunder prior to October 1, 1911.

§ 31. **Distribution of funds in case of repeal.**—If this act shall be hereafter repealed, all moneys which are in the accident fund at the time of the repeal shall be subject to such disposition as may be provided by the legislature, and in default of such legislative provision distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

§ 32. **Saving clause.**—This act shall not affect any action pending or cause of action existing on the 30th day of September, 1911.

Passed by the House February 23, 1911. Passed by the Senate March 7, 1911. Approved by the Governor March 14, 1911. Amended by Legislature, 1915, by Laws 1915, c. 188.

WEST VIRGINIA

WORKMEN'S COMPENSATION LAW

Section

1. State Compensation Commissioner—Appointment.
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 - (b) Legal services.
 - (c) No other business or office.
 - (d) Salary.
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2. Expense of administration.
3. Method of payment.
4. Office hours—Record.
5. (Repealed.)
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7. Assistants—Traveling expenses.
8. Rules of Commissioner.
9. Definition of employer and employé—Inclusion by application.
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14. Fees and mileage.
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18. Schedule of industries—Premiums—Re-adjustment—Surplus fund.
19. Compensation fund.
20. Same—Investment—Bonds.
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22. Exclusive liability.
23. Notice of election—Contracting out.
24. Premiums—Deductions from wages—Delinquency—Deposit in fund.
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Section

27. Medical, surgical and hospital treatment.
28. Intentional injury and willful misconduct—Safety rules—Deliberate injury by employer.
29. Funeral expense.
30. Waiting period.
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35. Division by representative.
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38. Periodical payments.
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40. Continuing jurisdiction.
41. Commutation to lump sum.
42. Exemption of claims.
43. Decision of Commissioner—Appeal.
44. Special procedure.
45. Expenses for statistics.
46. Annual report of Commissioner.
47. (Repealed.)
48. Absence of Commissioner.
49. Penalty for failure to report—False statement.
50. Penalty for seeking undue compensation.
51. Surplus funds—Investment.
52. Employers in interstate commerce.
53. Validity of Act.
54. Substitute schemes.
55. (Repealed.)

WORKMEN'S COMPENSATION LAW

(*Acts Reg. Sess. 1915, c. 9, p. 52, and Acts Extraordinary Session, 1915, c. 1, p. 609, Amending Acts 1913, c. 10, p. 65.*)

An Act to provide for the administration of a workmen's compensation fund by the West Virginia compensation commissioner, creating the office of compensation commissioner, and to define the powers, duties and liabilities of said commissioner, and to provide a method of compensation for employees that may be injured, or the dependents of those killed in the course of their employment, either from said fund to be raised and paid into the hands of the state treasurer as herein set forth; or directly from the employers of such employees, as the case may be; and to define and fix the rights of employees and employers; and to define the defenses that may be made by employers in actions for damages arising from death and personal injuries; and to provide a method of raising said fund to

meet the disbursements that may be ordered to be made under this act, and also to provide for the payment of the salaries and expenses of said commissioner and his employees; and for appeals from the rulings of said commissioner; and for defining the classes of employers and employees who may bring themselves under this act; and also defining those defenses that those employers not bringing themselves under this act may make in actions for damages arising from death of, or personal injury to their employees; and to amend and re-enact sections one, two, three, four, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-two, twenty-three, twenty-four, twenty-five, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-three, thirty-four, thirty-five, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-three, forty-four, forty-five, forty-six, forty-eight, forty-nine, fifty-one, fifty-two and fifty-four of chapter ten of the acts of one thousand nine hundred and thirteen; and to repeal sections five, thirty-two, forty-seven, and fifty-five of chapter ten of the acts of one thousand nine hundred and thirteen; and

An Act to amend and re-enact sections two, three, seven, fourteen, eighteen, nineteen, twenty-five and fifty-four of chapter ten of the acts of one thousand nine hundred and thirteen as amended and re-enacted by the legislature at the regular session of one thousand nine hundred and fifteen.

Be it enacted by the Legislature of West Virginia :

§ 1. State Compensation Commissioner—Appointment.—The office of state compensation commissioner is hereby created. The governor, by and with the consent of the senate, shall on or before the thirty-first day of May, one thousand nine hundred and fifteen, appoint as state workmen's compensation commissioner some citizen of this state entitled to vote, whose term of office shall begin at the date of appointment and shall continue for six years and until the successor of such commissioner is appointed and qualified, unless he be sooner removed. An appointment may be made to fill a vacancy or otherwise when the senate is not in session, but shall be acted upon at the next session thereof. The person so appointed shall make the oath or affirmation prescribed by section five of article four of the constitution, and such oath shall be certified by the person who administers the same and shall be filed in the office of the secretary of state. He shall give bond in the penalty of ten thousand dollars conditioned for the faithful performance of the duties of his office; which bond shall be approved by the attorney general as to form, and by the governor as to sufficiency, and when so approved, shall be filed and recorded in the office of the secretary of state. The surety of said bond may be a bonding or surety company, in which case the premium shall be paid out of the appropriation made for the administration of this act.

(a) Removal.—The commissioner may be removed by the governor for incompetency, neglect of duty, gross immorality or malfeasance in office, after giving him notice and a copy of the charges and the right to be heard in an investigation of the truth thereof. A record of the proceedings, including the evidence, shall be kept.

(b) Legal services.—The attorney general shall perform all legal services required by the commissioner under the provisions of this act.

(c) No other business or office.—The commissioner shall hold no position of trust or profit, or engage in any occupation or business, interfering or inconsistent with his duties as such commissioner.

(d) **Salary.**—The said commissioner shall receive an annual salary of six thousand dollars, payable in the same manner as the salaries of other state officers are paid and charged to the appropriations which shall be made from time to time hereafter by the state for the administration of this act.

(e) **Seal.**—The commissioner shall have an official seal for the authentication of his orders and proceedings, upon which seal shall be engraved the words, "West Virginia Compensation Commissioner," and such other design as the commissioner may prescribe; and the courts in this state shall take judicial notice of the seal of the said commissioner, and in all cases copies of orders, proceedings or records in the office of the West Virginia compensation commissioner certified by the secretary of the said commissioner under his seal, shall be equal to the original in evidence.

Until the appointment and qualification of said compensation commissioner the duties of said compensation commissioner shall be performed by the public service commission as is now prescribed by law. [Acts of 1915.]

§ 2. **Expense of administration.**—All expenses peculiar to the administration of this act, including the premiums to be paid for the bonds of the state treasurer and the compensation commissioner required under this act, and when on official business, the traveling and incidental expenses of the commissioner, and salaries or other compensation, traveling and other expenses of all officers or employees of the commissioner, and all expenses for furniture, books, maps, stationery, appliances and property of all kinds, shall be paid out of the workmen's compensation fund, hereinafter created, and the sum of eighty thousand dollars per annum, or so much thereof as may be necessary, is hereby appropriated out of the said fund for the purpose of paying the salaries and expenses necessary in the administration of this act. [Acts of 1915—Extraordinary Session.]

§ 3. **Method of payment.**—All payments of salaries and expenses in the administration of this act shall be made by the state treasurer upon order or voucher signed by the secretary and approved by the commissioner, directed to the auditor of the state, who shall draw his warrant therefor, and any such payment shall be charged to the workmen's compensation fund; provided, that the total charges against said fund under this section for any one fiscal year shall not exceed the amount appropriated under section two of this act. [Acts of 1915—Extraordinary Session.]

§ 4. **Office hours—Record.**—The offices of the commissioner shall be open for the transaction of business between the hours of nine o'clock, A. M., and five o'clock P. M., of each and every day, excepting Sundays and legal holidays, and be in charge of his secretary or some other competent person. All proceedings of the commissioner shall be shown on his record of proceedings, which shall be a public record and shall contain a record of each case considered and the award with respect thereto and of all salaries allowed to any employee of the commissioner or to any other person for services. [Acts of 1915.]

§ 5. (Repealed by Acts of 1915,)

§ 6. **Office and supplies.**—The commissioner shall keep and maintain his office at the seat of government, and shall provide a suitable room or rooms, necessary office furniture, supplies, books, periodicals, maps, and other equipment. After due notice, showing the time and place, the commissioner may hold hearings anywhere within the state.

As soon as said commissioner shall have been appointed and qualified, all records, books, papers, documents, office supplies and furniture, and other effects, appertaining to the administration of the workmen's compensation fund, shall be turned over to said commissioner, and placed in his custody and control, and the workmen's compensation fund heretofore created shall thereupon become subject to orders or vouchers approved by him as hereinafter provided, and from such time he shall have the same jurisdiction, rights, powers and duties, in respect to the payment of compensation out of the workmen's compensation fund upon awards theretofore made by the public service commission under said chapter ten of the acts of one thousand nine hundred and thirteen, and the same continuing jurisdiction in respect to awards theretofore made by said public service commission as was vested by said chapter ten in the public service commission and is vested by this act in the said commissioner; and said commissioner shall also have jurisdiction of all applications for compensation from said fund pending before said public service commission when said commissioner shall have been appointed and have qualified, and of all applications for compensation based upon accidents theretofore occurring as if they had occurred thereafter. [Acts of 1915.]

§ 7. Assistants—Traveling expenses.—The commissioner may employ a secretary, actuary, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants, and fix their compensation which shall be paid as provided in sections two and three of this act. The commissioner, secretary, actuaries, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants that may be employed shall be entitled to receive from the workmen's compensation fund their actual and necessary expense while traveling on business of the commissioner. Such expenses shall be itemized and sworn to by the person who incurred the expense, and allowed by the commissioner. [Acts of 1915.]

§ 8. Rules of Commissioner.—The commissioner shall adopt reasonable and proper rule of procedure, regulate and provide for the kind and character of notices, and the service thereof, in cases of accident and injury to employees, the nature and extent of the proofs and evidence, and the method of taking and furnishing the same, to establish the rights to benefits or compensation from the fund hereinafter provided for, or directly from employers as hereinafter provided, as the case may require, the forms of application of those claiming to be entitled to benefits or compensation therefrom, the method of making investigations, physical examinations and inspections, and prescribe the time within which adjudications and awards shall be made. [Acts of 1915.]

§ 9. Definition of employer and employé—Inclusion by application.—All persons, firms, associations and corporations regularly employing other persons for profit, or for the purpose of carrying on any form of industry or business in this state, (casual employment excepted), are employers within the meaning of this act, and subject to its provisions. All persons in the service of employers as herein defined, and employed by them for the purpose of carrying on the industry or business in which they are engaged, (casual employment excepted), are employees within the meaning of this act, and subject to the provisions hereof; provided, that this act shall not apply to employers of employees in domestic or agricultural service, persons prohibited by law from being employed, traveling salesmen, to employees of any employer who are employed wholly without this state; nor shall a member of

a firm of employers, or any officer of an association, or of a corporation employer, including managers, superintendents, assistant managers, or assistant superintendents, be deemed an employee within the meaning of this act.

Any employer whose employment in this state is to be for a definite or limited period which could not be considered "regularly employing" within the meaning of this act, may elect to pay into the workmen's compensation fund the premiums herein provided for, and at the time of making application to the commissioner, such employer shall furnish a statement under oath showing the probable length of time the employment will continue in this state, the character of the work, an estimate of the monthly pay roll, and any other information which may be required by the commissioner. At the time of making application such employer shall deposit with the state treasurer to the credit of the workmen's compensation fund the amount required by section twenty-four of this act, which amount shall be returned to such employer if his application be rejected by the commissioner. Upon notice to such employer of the acceptance of his application by the commissioner, he shall be an employer within the meaning of this act, and subject to all of its provisions.

Any foreign corporation employer electing to comply with the provisions of this act and to receive the benefits hereunder, shall at the time of making application to the commissioner, in addition to the other requirements of this act, furnish such commissioner with a certificate from the secretary of state showing that it has complied with all of the requirements necessary to enable it to legally do business in this state, and no application of such foreign corporation employer shall be accepted by the commissioner until such certificate is filed. [Acts of 1915.]

§ 10. Furnishing of information.—Every employer shall furnish the commissioner, upon request, all information required by him to carry out the purposes of this act. The commissioner, or any person employed by the commissioner for that purpose, shall have the right to examine under oath any employer or officer, agent or employé of any employer. [Acts of 1915.]

§ 11. Blanks and forms—Report.—The commissioner shall prepare report blanks for the use of, and furnish the same to, employers subject to this act; and every employer receiving from the commissioner any blank or blanks with directions for filling out and returning the same, shall return the same filled out so as to answer fully and correctly all pertinent questions therein propounded, and if unable to do so, shall give good and sufficient reasons for such failure. Answers to such questions shall be verified under oath and returned to the commissioner within the period fixed by the commissioner for such return. Every employer subject to the provisions of this act, who may hereafter elect to pay the premiums as provided herein, and to receive the benefits hereunder, shall make application on the forms prescribed by the commissioner for such purpose; and all employers who desire to discontinue the payment of the premiums required under this act, shall so notify the commissioner on forms to be furnished by the commissioner for the purpose. [Acts of 1915.]

§ 12. Powers of Commissioner and assistants.—The commissioner, secretary and every inspector or examiner appointed by the commissioner shall, for the purposes contemplated by this act, have power to administer oaths, certify official acts, take depositions, issue subpoenas and compel the attend-

ance of witnesses and the production of pertinent books, accounts, papers, records, documents and testimony. [Acts of 1915.]

§ 13. **Disobedience—Contempt.**—In case of failure, or refusal of any person, to comply with the order of the commissioner, or subpoena issued by him, secretary, or one of his inspectors, or examiners, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refuse to permit an inspection as aforesaid, the circuit judge of the county in which the person resides, on application of the commissioner, or any inspector or examiner appointed by him, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of a subpoena issued from said court on a refusal to testify therein. [Acts of 1915.]

§ 14. **Fees and mileage.**—Each officer who serves such subpoena shall receive the same fee as a sheriff, and each witness who appears, in obedience to a subpoena, before the commissioner, or an inspector, or an examiner, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the circuit court, which shall be audited and paid out of the workmen's compensation fund in the same manner as other expenses are audited and paid, upon presentation of proper vouchers approved by the commissioner.

No witness subpoenaed at the instance of a party other than the commissioner, or an inspector, or an examiner, shall be entitled to receive any fee or mileage out of the workmen's compensation fund unless the commissioner shall certify that his testimony was material to the matter investigated. [Acts of 1915—Extraordinary Session.]

§ 15. **Depositions.**—In an investigation, the commissioner may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions as provided for transcripts in the circuit court. [Acts of 1915.]

§ 16. **Transcript of evidence.**—A transcribed copy of the evidence and proceeding or any specific part thereof, on any investigation, taken by a stenographer appointed by the commissioner, being certified and sworn to by such stenographer to be a true and correct transcript of the testimony in the investigation, or of a particular witness, or of a specific part thereof, or to be a correct transcript of the proceedings had on such investigation so purporting to be taken and subscribed, may be received in evidence by the commissioner with the same effect as if such stenographer were present and testified to the facts certified. A copy of such transcript shall be furnished on demand to any party upon payment of the fee therefor, as provided for transcripts in the circuit court. [Acts of 1915.]

§ 17. **Blank forms.**—The commissioner shall prepare and furnish free of cost blank forms (and provide in his rules for their distribution so that the same may be readily available), of applications for benefits for compensation from the workmen's compensation fund, or directly from employers, as the case may be, notices to employers, proofs of injury or death, of medical attendance, of employment and wage earnings, and such other blanks as may be deemed proper and advisable, and it shall be the duty of employers to constantly keep on hand a sufficient supply of such blanks. [Acts of 1915.]

§ 18. **Schedule of industries—Premiums—Readjustment—Surplus fund.**—For the purpose of this act the industries that now are or hereafter may be subject thereto, are divided into schedules as follows:

(a) Coal mines, including their tipples, power, light, heating and ventilating plants, tramways, private tracks and sidings, and accessory and auxiliary plants working in or with by-products.

(b) Paint manufactories, oil refineries, oil and gas wells, including their pipe lines, storage, power or light plants, tramways, private tracks and sidings, and accessory and auxiliary plants working in or with by-products.

(c) Iron and steel mills, including blast furnaces, smelters, tube works, rolling mills, and their accessory and auxiliary plants working in or with by-products, generating power, light or heat or operating tramways, private tracks and sidings.

(d) Sheet and tin plate mills, including their accessory and auxiliary plants working in or with by-products, generating power, light or heat or operating tramways, private tracks and sidings.

(e) Foundries, machine shops, fire arms factories, tool factories, car building and repairing, structural iron works, and working in or with iron or steel, not otherwise specified, where power driven machinery is used, together with their accessory and auxiliary plants working in or with by-products, or generating power, light or heat, or operating tramways, private tracks and sidings.

(f) Stamped metal works, can factories, enamel iron works, and working in or with sheet iron or tin plate, not otherwise specified, where power driven machinery is used, together with their accessory and auxiliary plants working in or with by-products, or generating power, light or heat, or operating tramways, private tracks and sidings.

(g) Logging, logging railroads and tramways, sawmills, including their accessory and auxiliary plants working in or with by-products, or generating power, light or heat, or operating tramways, private tracks and sidings.

(h) Planing mills, wood pulp, cordage and paper mills, box factories, cooperage plants, furniture factories, woodenware or wood fibre ware manufactories, vehicle works of every kind, including their accessory and auxiliary plants working in or with by-products, or generating power, light or heat, or operating tramways, private tracks and sidings.

(i) Glass houses of all kinds, including manufactories of tableware, bar goods, bottles, tumblers, lamps, glass light fixture parts, window and plate glass potteries of all kinds, including tile, bricks, terra-cotta, fire clay, earthenware, porcelain, china and crockeryware using automatic machinery, together with accessory and auxiliary plants working in or with by-products, or generating light or heat, or operating tramways, private tracks and sidings.

(k) Printing plants of all kinds, electrotyping, photo-engraving, engraving, lithographing, embossing, book-binding, and accessory and auxiliary lines of work and manufacture.

(l) Woolen mills, knitting mills, cotton mills, carpet and rug mills, clothing manufactories of every kind and working in or with textiles not otherwise specified.

(m) Breweries, bottling works, canneries of fruits, vegetables, oils, fish, milk or meat, manufactories of preserves, jellies, ketchup, sauces, relishes, pickles, flour and feed mills, bakeries, confectioneries, drug and extract manufactories, tobacco, cigar, stogie and cigarette manufactories, in which power driven machinery is used.

(n) Slaughter and packing houses, stock yards, soap, tallow, lard and grease manufactories, tanneries, artificial ice, and refrigerating and cold storage plants, creameries, and carbon black factories, in which power driven machinery is used.

(o) Steam laundries, dyeing and cleaning plants, stamping, embossing and working with leather, shoe and harness manufactories, mattress and bedding factories, upholstering factories, manufacturers of rubber goods, and auxiliary and accessory lines of work and manufacture not otherwise specified.

(p) Steam and other railroads and transportation systems not otherwise specified.

(q) Street and interurban railways, whether propelled by electricity or other power.

(r) Telegraph and telephone-plants and systems, electric light and power plants and systems, steam heat and power plants and systems, water works systems, gas works and systems, grain elevators, and all lighting, heating or power systems not otherwise specified.

(s) Quarries, stone crushers, gravel pits, mines other than coal mines and working with asphalt, cement, stone or other building material not otherwise specified, power propelled ferries, sand diggers and other water craft.

(t) Such works, occupations and manufactories specified in the foregoing schedules as are operated without power driven machinery.

(u) Match factories, powder mills, fireworks factories, and works in which articles of an explosive nature are mixed or manufactured.

(v) Construction of tunnels, shafts, bridges, trestles, steeples, towers, grain elevators, tanks, water towers, wind mills, subaqueous works, iron or steel frame structures or parts of structures, blast furnaces, smoke stacks, cupolas or chimneys more than fifty feet high, water works and systems, electric lights and power plants and systems, gas works and systems, installation of steam boilers, engines and dynamos, steam railroads, logging railroads, street railways and systems, boat building with scaffolds, floating docks, engineering works, structural work on buildings over three stories in height, not otherwise specified, and drilling of wells.

(w) Construction and installation of sewers, fire escapes, freight or passenger elevators, advertising signs, ornamental metal work on or in buildings, metal ceilings, plate or window glass, electrical wiring, stairways, buildings which require galvanized iron or tin work, marble, stone or brick work, roof work, slate work, plumbing work, carpenter work, electric work, installing automatic sprinklers, electric or fire alarm systems, heating or ventilating systems, or machinery not otherwise specified, covering steam pipes and boilers, road and street making, street or other grading, and structural work not otherwise specified.

(x) Any industry or business not specified in the foregoing schedules, for which any employer shall voluntarily apply to the commissioner to be brought under the provisions of this act; and the commissioner shall have the authority to classify and place in one of the schedules aforesaid, or any schedule created by him as hereinafter mentioned, any industry or business subject to this act not hereinbefore specifically mentioned.

The commissioner shall have the power to re-classify into schedules, at any time, the industries subject to this act, and to create additional schedules if deemed advisable by him.

In addition to classifying into schedules the industries subject to this act, as hereinbefore provided, it shall be the duty of said commissioner, when in his opinion there is a sufficient number of employers with different degrees of hazard in any schedule to warrant the same, to sub-divide any schedule into classes based upon the respective degrees of hazard of such employer as shown upon the books of the commissioner for a period of twelve months previous to the time of such sub-division; and any such employer who shall not have been a subscriber for said period of twelve months shall be assigned to one of said classes as may be deemed proper by the commissioner until his record for one year can be obtained.

The risk of the different classes shall be determined from the record of the employers forming each class as shown upon the books of the commissioner, and the commissioner shall fix the rate of premium for each class according to the risk of the same.

(y) It shall be the duty of the commissioner in the exercise of the powers and discretion conferred upon him in the preceding sub-section, to fix and maintain the lowest possible rates of premium consistent with the maintenance of a solvent workmen's compensation fund and the creation and maintenance of a reasonable surplus after providing for the payment of all liability incurred by reason of injury or death to employees entitled to benefits under the provisions of this act and the expenses of the administration of same; and, in order that said object may be accomplished, the commissioner shall observe the following requirements in classifying occupations and fixing the rate of premium for the risk of the same:

(1) He shall keep an accurate account of the money paid in premiums by each of the several schedules, and the liability incurred, and disbursements on account of injuries and death of employees thereof; and also keep an account of the money received from each individual employer, and the liability incurred and disbursements on account of injuries and death of the employees of such employer.

(2) Ten per centum of all that may hereafter be paid into the workmen's compensation fund shall be set aside for the creation of a surplus fund until such surplus shall amount to the sum of one hundred thousand dollars, after which time the sum of five per centum of all the money paid into the said fund shall be credited to such surplus fund, until such time as, in the judgment of the commissioner, such surplus shall be sufficiently large to cover the catastrophe hazard and all other unanticipated losses.

(3) On the first day of July, one thousand nine hundred and sixteen, and annually thereafter, a re-adjustment of the rates shall be made for each of the several classes in accordance with the experience of the commissioner in the administration of the law, as shown by the accounts kept, as provided herein; provided, that nothing contained in this sub-section shall prevent the commissioner from adjusting at any time the premium rate for any class.

It shall be the duty of the commissioner whenever he changes any rate to notify every employer affected thereby of that fact and of the new rate and when the same takes effect. It shall also be his duty to furnish to each employer yearly, or oftener, if requested by the employer, a statement giving the name of each of his employees who were paid for injury and the amount so paid during the period covered by the statement. [Acts of 1915—Extraordinary Session.]

§ 19. **Compensation fund.**—The commissioner shall establish a workmen's compensation fund from premiums and other funds paid thereto by employers and employees as herein provided, for the benefit of employees of employers that have paid the premium applicable to the classes to which they belong and for the benefit of the dependents of such employees and for the payment of the expenses of the administration of this act, and shall adopt rules and regulations with respect to the collection, maintenance and disbursement of said fund, not in conflict with the provisions of this act.

Employers electing as herein provided to individually and directly compensate their injured employees and their fatally injured employees' dependents, shall do so in the manner prescribed by the compensation commissioner and shall make all reports, execute all blanks, forms and papers as directed by said commissioner and as herein provided in this act. [Acts of 1915—Extraordinary Session.]

§ 20. **Same—Investment—Bonds.**—All payments into the workmen's compensation fund shall be made into the state treasury in the manner prescribed in chapter seventeen of the code of West Virginia and such fund shall consist of such payments and all interest accruing thereto upon investments and deposits in state depositories, and any other moneys or funds which may be given, appropriated or otherwise designated or accruing thereto. Said funds shall be a separate and distinct fund and shall be so kept upon the books and records of the auditor and treasurer. Disbursements from such fund shall be made upon requisition signed by the secretary and approved by the compensation commissioner. The board of public works shall have authority to invest the surplus, reserve or other moneys belonging to the fund in the bonds of the United States, of this state, or of any county, city, town, village, or school district of the state. No such investment shall be made, nor any investment sold or otherwise disposed of without the concurrence of a majority of all members of the board of public works. It shall be the duty of every county, school district, or municipality issuing any bonds, to offer the same in writing to the board of public works, prior to advertising the same for sale, except such thereof as may have been taken by the trustees of the sinking fund of the country, district or municipality, and the board of public works shall, within fifteen days after receipt of such offer, accept the same and purchase such bonds or any portion thereof at par and accrued interest, or make an offer to purchase the same at such price as the board named in such offer, or reject such offer. All bonds purchased by the board of public works for investment for the workmen's compensation fund shall be placed in the hands of the auditor as the custodian thereof, and it shall be his duty to keep and account for the same as he keeps and accounts for other securities of the state, and to collect the interest thereon as the same becomes due and payable, and the principal when the same is due. No bonds or other securities shall be purchased by the board of public works until and unless the attorney general shall investigate the issuance of such bonds or securities and shall give a written opinion to the board that the same have been regularly issued according to the constitution and the laws of this state, which opinion if such bonds or securities be purchased shall be filed with the auditor with such bonds or securities. [Acts of 1915.]

§ 21. **Custodian of fund—Bond.**—The treasurer of the state shall give a separate and additional bond, in such amount as may be fixed by the gover-

nor and with sureties to be approved by him, conditioned for the faithful performance of his duties as custodian of the workmen's compensation fund herein provided for. [Acts of 1913.]

§ 22. Exclusive liability.—Any employer subject to this act who shall elect to pay into the workmen's compensation fund the premiums provided by this act, shall not be liable to respond in damages at common law or by statute for the injury or death of any employee, however occurring, after such election and during any period in which such employer shall not be in default in the payment of such premiums; provided, the injured employee has remained in his service with notice that his employer has elected to pay into the workmen's compensation fund the premiums provided by this act. The continuation in the service of such employer with such notice shall be deemed a waiver by the employee and by the parents of any minor employee of the right of action as aforesaid, which the employee or his or her parents would otherwise have. [Acts of 1915.]

§ 23. Notice of election—Contracting out.—Each employer electing to pay the premiums provided by this act into the workmen's compensation fund, or electing to make direct payments of compensation as hereinafter provided, shall post and keep posted in conspicuous places about his place or places of business typewritten or printed notices stating the fact that he has made such election, and the same when so posted shall constitute sufficient notice to all his employees and to the parents of any minor employees of the fact that he has made such election.

No employer or employee shall exempt himself from the burden or waive the benefits of this act by any contract, agreement, rule, or regulation, and any such contract, agreement, rule, or regulation shall be pro tanto void. [Acts of 1915.]

§ 24. Premiums—Deductions from wages—Delinquency—Deposit in fund.—For the purpose of creating such workmen's compensation fund each employer subject to this act shall pay into the state treasury the premiums of liability based upon and being such a percentage of the pay-roll of such employer as may have been determined by the commissioner and be then in effect. The premiums provided for in this act shall be paid by the employers into the treasury of the state, and be contributed in the proportion of ninety per centum by the employers, and ten per centum by the employees. The premium shall be paid monthly on or before the twenty-fifth of each month, for the preceding month, and shall be the prescribed percentage of the total earnings of all employees subject to this act for such preceding month. The minimum premium to be paid by any employer for any month shall be one dollar.

Each employer is authorized to deduct from the pay of his employees (excepting persons casually employed) for each month, ten per centum of the premium paid or to be paid for such month, in proportion to the pay received by them respectively, for such month, the proper percentage to be deducted from each installment of pay, whether paid monthly or more frequently. The minimum deduction from the earnings of each employee in any one month for which settlement is made to be five cents.

Each employer shall give a receipt or statement to each employee of the amount which has been deducted for the workmen's compensation fund, and shall file with the commissioner on making his next payment to the fund a

sworn statement showing what per centum of said payment herein provided to be paid by the employees, (disregarding fractions of a cent), has been deducted; and that no more than ten per centum (subject to the minimum requirement aforesaid), has been so deducted. The state treasurer shall issue his receipt for any sums paid him hereunder, in duplicate, the original to be delivered to the person, firm or corporation paying the same, the duplicate to be filed with the commissioner.

If such premiums be not paid as herein provided, a penalty of ten per centum of the amount of such premium shall be collected and paid into the workmen's compensation fund, as aforesaid; and the failure to pay all premiums and penalties as herein provided for two succeeding months shall deprive the employer so delinquent of the benefits and protection afforded by this act, and shall terminate the election of such delinquent employer to pay into the workmen's compensation fund as herein provided, and such employer shall be liable to employees as provided in section twenty-six of this act; and the commissioner shall not be required to notify the delinquent employer of such termination or suspension, but he shall notify the employees of such employer thereof in such manner as he may deem best and sufficient.

The employer so delinquent may be re-instated upon application under such terms as are prescribed by this act, and by the commissioner hereunder, after the payment into the workmen's compensation fund of all unpaid premiums, penalties, interest and charges. Such re-instatement shall be in force from and after the date that the new application is accepted by the commissioner, and said delinquent employer shall not receive any benefits hereunder during such suspension, nor shall his employees receive compensation for injuries received during the period of such suspension.

To insure the payment of the monthly premiums herein provided, all employers who have heretofore elected to accept the provisions of the workmen's compensation act shall pay into the workmen's compensation fund, in addition to the premiums provided for, an amount at least equal to the amount of premiums paid for the last two preceding months, and said employer shall be required to keep on deposit at all times in the said workmen's compensation fund an amount at least equal to the premiums for the last two preceding months. Such employer, upon the receipt of notice from the commissioner, that the amount which he is required to keep deposited in said fund is not equal to the premiums paid for the last preceding two months, shall immediately deposit as herein provided a sum sufficient and necessary to comply with the requirements of this act.

Any employer hereafter electing to avail himself of the benefits of this act shall at the time of making application to the commissioner deposit in the workmen's compensation fund an amount estimated to be equal to the amount of the premiums which will be paid by him hereunder for the next succeeding two months.

The deposit in said workmen's compensation fund shall be held as an advance credit to the employer and used to pay or to apply on the payment of the monthly premiums and any other sums due the said fund when said employer becomes delinquent in the payment of same. Upon the withdrawal of any employer from the fund, he shall be refunded the balance due him of this advanced deposit, after deducting all amounts owed by said employer to the workmen's compensation fund. [Acts of 1915.]

§ 25. Compensation provided—Hernia.—The commissioner shall disburse the workmen's compensation fund to the employees of such employers as have paid into said fund the premiums for the month in which the injury occurs, or who have on deposit in said fund, as hereinbefore provided for, an amount sufficient to guarantee the payment of said premiums, and which employees shall have received injuries in this state in the course of and resulting from their employment, or to the dependents, if any, of such employees in case death has ensued according to the provisions hereinafter made, and also for the expenses of the administration of this act as provided in section two hereof.

In all claims for compensation for hernia resulting from injury received in the course of and resulting from the employee's employment, it must be definitely proven to the satisfaction of the commissioner:

First, That there was an injury resulting in hernia;

Second, That the hernia appeared suddenly;

Third, That it was accompanied by pain;

Fourth, That the hernia immediately followed an injury;

Fifth, That the hernia did not exist prior to the injury for which compensation is claimed.

All hernia, inguinal, femoral or otherwise, so proven to be the result of an injury received in the course of and resulting from the employment, shall be treated in a surgical manner by radical operation. If death results from such operation, the death shall be considered as a result of the injury, and compensation paid in accordance with the provisions of section thirty-three. In non-fatal cases, time loss only shall be paid, unless it is shown by special examination that the injured employee has a permanent partial disability resulting after the operation. If so, compensation shall be paid in accordance with the provisions in section thirty-one with reference to permanent partial disability.

In case the injured employee refuses to undergo the radical operation for the cure of said hernia, no compensation will be allowed during the time such refusal continues. If, however, it is shown that the employee has some chronic disease or is otherwise in such physical condition that it is considered unsafe for him to undergo said operation, he shall be paid as provided in section thirty-one. [Acts of 1915—Extraordinary Session.]

§ 26. Abrogation of defenses.—All employers subject to this act who shall not have elected to pay into the workmen's compensation fund the premiums provided by this act, or having so elected, shall be in default in the payment of same, shall be liable to their employees (within the meaning of this act) for damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect or default of the employer, or any of the employer's officers, agents or employees, and also to the personal representatives of such employees where death results from such injuries, and in any action by any such employee or personal representative thereof such defendant shall not avail himself of the following common law defenses:

The defense of the fellow-servant rule; the defense of the assumption of risk; or the defense of contributory negligence; and further shall not avail himself of any defense that the negligence in question was that of some one whose duties are prescribed by statute. [Acts of 1913.]

§ 27. Medical, surgical and hospital treatment.—The commissioner shall disburse and pay from the fund for such injuries to such employees as may be entitled thereto hereunder, as follows:

(a) Such sums for medical, surgical and hospital treatment as in the opinion of the commissioner may reasonably be required, not, however, in any case to exceed the sum of one hundred and fifty dollars; provided, that in case an injured employee has sustained a permanent disability and it is the opinion of the commissioner that the per centum of said disability can be reduced or made negligible by surgical or medical treatment, the amount expended for medical, surgical and hospital treatment may be, but shall not exceed three hundred dollars in any case.

(b) Payment for such medical, surgical and hospital treatment may be made to the injured employee, or to the persons who have furnished the service, or to the persons who have advanced payment for same, as the commissioner may deem proper.

(c) Notwithstanding anything hereinbefore contained, no payment shall be made out of the workmen's compensation fund for medical, surgical or hospital treatment for an injured employee if said employee be entitled under contract connected with his employment or otherwise, to medical, surgical or hospital treatment without further charge to him. [Acts of 1915.]

§ 28. Intentional injury and willful misconduct—Safety rules—Deliberate injury by employer.—Notwithstanding anything hereinbefore or hereinafter contained, no employee or dependent of any employee shall be entitled to receive any sum from the workmen's compensation fund, or to direct compensation from any employer making the election and receiving the permission mentioned in section fifty-four hereof, or otherwise under the provisions of this act, on account of any injury to or death of any employee caused by a self-inflicted injury, the wilful misconduct, or disobedience to such rules and regulations as may be adopted by the employer and approved by the commissioner, or the intoxication of such employee.

For the purpose of this act, and to prevent accidents to employees, the commissioner may require all employers to adopt rules for the protection and safety of their employees and keep the same posted in conspicuous places in and about the work; which rules shall be submitted to the commissioner for his approval.

If injury or death result to an employee from the deliberate intention of his employer to produce such injury or death, the employee, the widow, widower, child or dependent of the employee shall have the privilege to take under this act, and also have cause of action against the employer as if this act had not been enacted, for any excess of damages over the amount received or receivable under this act. [Acts of 1915.]

§ 29. Funeral expense.—In case death ensues from the injury within the period of twenty-six weeks, reasonable funeral expense, not to exceed seventy-five dollars, may be paid from the fund, payment to be made to the persons who have furnished the service and supplies, or to the persons who have advanced payment for same, as the commissioner may deem proper, in addition to such award as may be made to the employee's dependents. [Acts of 1915.]

§ 30. Waiting period.—If the period of disability does not last longer than one week from the day the employee leaves work as the result of the

injury, no award shall be allowed, except the disbursement provided for in sections twenty-seven and twenty-nine.

(a) If the period of disability lasts longer than one week from the day the employee leaves work as the result of the injury, no award shall be allowed for the first week of such disability, except the disbursement provided for in sections twenty-seven and twenty-nine. [Acts of 1915.]

§ 31. Schedule of compensation.—Where compensation is due an employee under the provisions of this act, such compensation shall be as provided in the following schedule:

(a) If the injury causes temporary total disability, the employee shall receive during the continuance thereof fifty per centum of his average weekly earnings, not to exceed a maximum of ten dollars per week nor to be less than a minimum of five dollars per week.

(b) If the injury causes temporary partial disability, the employee shall receive during the continuance thereof fifty per centum of the weekly loss in wages, not to exceed a maximum of ten dollars per week.

(c) Paragraphs (a) and (b) of this subdivision shall be limited as follows: Aggregate award for a single injury causing temporary disability shall be for a period not exceeding twenty-six weeks; provided, that in case an injured employee, by reason of having an ununited fracture, or having undergone a surgical operation to correct a vicious union following a fracture, or for the repair of an ununited fracture, or having suffered an injury to the spine or pelvic bones which is of a temporary nature, is disabled for a longer period than twenty-six weeks, the period for which compensation shall be paid may be, but shall not exceed, fifty-two weeks.

(d) If the accident causes permanent disability, the percentage of disability, to total disability shall be determined and the award computed and allowed as follows:

For a ten per centum disability, fifty per centum of the average weekly earnings for a period of thirty weeks;

For a twenty per centum disability, fifty per centum of the average weekly earnings for a period of sixty weeks;

For a thirty per centum disability, fifty per centum of the average weekly earnings for a period of ninety weeks;

For a forty per centum disability, fifty per centum of the average weekly earnings for a period of one hundred and twenty weeks;

For a fifty per centum disability, fifty per centum of the average weekly earnings for a period of one hundred and fifty weeks;

For a sixty per centum disability, fifty per centum of the average weekly earnings for a period of one hundred and eighty weeks;

For a seventy per centum disability, fifty per centum of the average weekly earnings for a period of two hundred and ten weeks;

For a disability exceeding seventy per centum and less than eighty-five per centum, forty per centum of the average weekly earnings during the remainder of life;

For a disability from eighty-five to one hundred per centum, fifty per centum of the average weekly earnings during the remainder of life.

(e) The award for permanent disabilities intermediate to those fixed by the foregoing schedule and from ten per centum to seventy per centum dis-

abilities shall be in the same proportion and shall be computed and allowed by the commissioner.

(f) Paragraphs (d) and (e) of this subdivision shall be limited as follows: Not to exceed a maximum of eight dollars per week nor to be less than a minimum of four dollars per week.

(g) The loss of an arm at or above the elbow shall be considered a fifty per centum to sixty-five per centum disability and shall be used as a basis in determining the per centum of permanent disability. Account shall also be taken of the nature of the physical injury, the occupation of the injured employee and his age at the time of such injury.

(h) Nothing contained in the foregoing schedule of permanent disability awards shall be held to limit the amount of compensation receivable for any such permanent injury during any period of total disability under paragraphs (a) and (b) of section thirty-one, but any sum so received shall be deducted from the compensation payable in accordance with the said schedule. Compensation under this section shall be payable only to the injured employee, or to his dependents at the time of the injury, and the right thereto shall not vest in his estate, nor in the estate of his dependents.

(i) The following permanent disabilities shall be conclusively presumed to be total in character:

Loss of both eyes or the sight thereof;

Loss of both hands or the use thereof;

An injury resulting in practically total paralysis.

In all other cases permanent total disability shall be determined in accordance with the fact. [Acts of 1915.]

§ 32. (Repealed by Acts of 1915.)

§ 33. **Death benefits—Amount—To whom payable.**—In case the injury causes death within the period of twenty-six weeks from date of injury, the benefits shall be in the amounts and to the persons as follows:

(a) If there be no dependents, the disbursements shall be limited to the expense provided for in section twenty-seven and section twenty-nine of this act and such award under section thirty-one of this act as may have accrued and been paid.

(b) If the deceased employee be under the age of twenty-one and unmarried and leave a dependent father or mother, the father, or if there be no father, the mother shall be entitled to a payment of fifty per centum of the average weekly wages, not to exceed a maximum of six dollars per week, to continue until the employee would have been twenty-one years of age, or until the death of said dependent, if same occurs before said employee would have been twenty-one years of age.

(c) If the deceased employee leave a widow or invalid widower, the payment shall be twenty dollars per month until the death or re-marriage of such widow or widower, and in addition five dollars per month for each child under the age at which he or she may be lawfully employed in any industry, to be paid until such child reaches such age; provided, that the total payment shall not exceed thirty-five dollars per month; and, provided, further, if such widow or invalid widower shall re-marry within two years from date of the death of such employee, such widow or widower shall be paid at the time of re-marriage twenty per centum of the amount that would be due for the period remaining between the date of such re-marriage and the end of ten

years from date of death of said employee; provided, further, that if upon investigation it shall be ascertained that said widow or widower is living with a man or woman, as the case may be, as man and wife and not married, or the widow living a life of prostitution, the commissioner shall stop the payment of the benefits herein provided to said widow or widower.

If the deceased employee be a widow or widower and leave a child or children under the age of fifteen years, the payment shall be ten dollars per month to each such child until he or she reaches the age of fifteen years, the total payment in any case not to exceed thirty dollars per month.

The word "child" as used in this act shall include a posthumous child, or a child legally adopted prior to the injury causing death.

(d) If the deceased employee be an adult and there be no widow, widower or child under the age at which he or she may be lawfully employed in any industry, but there are wholly dependent persons at the time of death, the payment shall be fifty per centum of the average monthly support actually received from the employee during the preceding twelve months, to continue for the remainder of the period between the date of death and six years after the date of injury, and shall not amount to more than a maximum of twenty dollars per month.

(e) If there be no widow, widower or child under the age at which he or she may be lawfully employed in any industry, or wholly dependent persons, but there are partly dependent persons at the time of death, the payment shall fifty per centum of the average monthly support actually received from the employee during the preceding twelve months, and to continue for such portion of the period of six years after the date of death as the commissioner in the case may determine, and not amount to more than a maximum of twenty dollars per month.

Compensation under sub-sections (d) and (e) hereof shall cease upon the death of the dependent, and the right thereto shall not vest in his or her estate.

(f) Dependent, as used in this act, means a widow, invalid widower, child under fifteen years of age, invalid child over such age, or posthumous child, who, at the time of the injury causing death, is dependent in whole or in part for his or her support upon the earnings of the employee; also, the following persons who are and continue to be residents of the United States or its territorial possessions: step-child under fifteen years of age, child under fifteen years of age legally adopted prior to the injury causing death; father, mother, grandfather or grandmother, who, at the time of the injury causing death, is dependent in whole or in part for his or her support upon earnings of the employee. [Acts of 1915.]

§ 34. Payment—Apportionment.—The benefits, in case of death, shall be paid to such one or more dependents of the decedent, or to such other persons, for the benefits of all of the dependents, as may be determined by the commissioner, who may apportion the benefits among the dependents in such manner as he may deem just and equitable. Payment to a dependent subsequent in right may be made if the commissioner deems proper, and shall operate to discharge all other claims therefor. [Acts of 1915.]

§ 35. Division by representative.—The dependent or person to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof according to their respective claims upon the decedent for support, in compliance with the finding and direction of the commissioner. [Acts of 1915.]

§ 36. **Separation or abandonment.**—Notwithstanding anything herein contained, no sum shall be paid to a widow or widower who shall have been living separate and apart from, or have been abandoned by the employee for twelve months next preceding the injury, and who shall not have been supported by him or her during such time. But in the event a chancery suit or other action be pending concerning the relations of said widow, or widower to said employee, then payment shall be made subject to the final adjudication of said suit or action. [Acts of 1913.]

§ 37. **Basis of compensation.**—The average weekly wage or earnings of the injured person at the time of injury shall be taken as the basis upon which to compute the benefits. The time of injury within the meaning of this act shall be such reasonable time prior to the injury as shall enable the commissioner to make a fair award, taking into consideration both the rate of wage and earnings of such person prior to his entering the service in which he was injured. [Acts of 1915.]

§ 38. **Periodical payments.**—Payments may be made in such periodical installments as may seem best to the commissioner in each case. Notwithstanding anything herein contained, the commissioner may, in his discretion, direct the re-payment of, and pay out of any installment, any advances for necessities that may have been made by any person pending the payment of such installment. [Acts of 1915.]

§ 39. **Time limitations—Non-resident aliens.**—To entitle any employee or dependent of a deceased employee to compensation under this act the application therefor must be made in due form within six months from and after the date of injury or death, as the case may be, and all proofs of dependency in fatal cases must be filed with the commissioner within nine months from and after the date of death. Non-resident aliens may be officially represented by the consular officers of the country of which such aliens may be citizens or subjects. [Acts of 1915.]

§ 40. **Continuing jurisdiction.**—The power and jurisdiction of the commissioner over each case shall be continuing, and he may from time to time make such modification or change with respect to former findings or orders with respect thereto, as, in his opinion, may be justified. [Acts of 1915.]

§ 41. **Commutation to lump sum.**—The commissioner, under special circumstances and when the same is deemed advisable, may commute periodical benefits to one or more lump sum payments. [Acts of 1915.]

§ 42. **Exemption of claims.**—Benefits before payments shall be exempt from all claims of creditors and from any attachment or execution and shall be paid only to or for the use of such employes or their dependents as hereinbefore provided. [Acts of 1913.]

§ 43. **Decision of Commissioner—Appeal.**—The commissioner shall have full power and authority to hear and determine all questions within his jurisdiction, and to review the action of any employer taken under section fifty-four thereof, and the decision of the commissioner thereon shall be final; provided, however, in case the final action of said commissioner denies the right of the claimant to receive compensation from the fund or directly from the employer, as the case may be, on the ground that the injury was self-inflicted, or on the ground that the injury was not received in the course of and resulting from his employment, or upon any other ground going to the basis of the claimant's right, then the claimant may, within sixty days after

notice of the final action of such commissioner, apply for an appeal to the supreme court of appeals. The appellant shall file a petition before said supreme court of appeals against such commissioner as defendant, within said period of sixty days, and the commissioner shall be notified by the clerk of said court, forthwith, of the filing of such petition for appeal. And the commissioner shall within ten days after the receipt of such notice, file with the clerk of said court the record of such proceedings before the commissioner, including a transcript of the evidence. The court, or any judge thereof, may thereupon decide whether an appeal shall be granted or not. If granted the commissioner and the claimant or the claimant's attorney shall be notified of the fact by mail. If an appeal is granted the case shall be tried by said court in the same manner as other cases before it, save and except that neither the record nor briefs need be printed, and that every such appeal granted prior to thirty days before the beginning of any term shall be on the docket for such term, and such appeals shall have precedence over other cases on such docket. The attorney general, without extra compensation, or other counsel, if the commissioner sees fit to employ the same, shall represent the commissioner on such appeal. The supreme court on such appeal shall determine the right of the claimant and certify its decision to the commissioner, and, if it determines the right in his favor, the commissioner shall fix his compensation within the limits and under the rules prescribed in this act. The cost of such proceedings, including a reasonable attorney's fee, not exceeding one hundred dollars, to the claimant's attorney, to be fixed by the court, shall be taxed against the unsuccessful party. No fees, expenses or costs shall be paid out of any compensation awarded. [Acts of 1915.]

§ 44. **Special procedure.**—Such commissioner shall not be bound by the usual common law or statutory rules of evidence, or by any technical or formal rules of procedure, other than herein provided, but may make the investigation in such manner as in his judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly and liberally the spirit of this act. [Acts of 1915.]

§ 45. **Expenses for statistics.**—The commissioner may make necessary expenditures to obtain statistical and other information to establish the classes provided for in section eighteen. [Act of 1915.]

§ 46. **Annual report of Commissioner.**—Annually on or about the fifteenth day of September in each year, the commissioner under oath, shall make a report as of the thirtieth day of June, to the governor, which shall include a statement of the number of awards made by him, and a general statement of the causes of the accidents leading to the injuries for which the awards were made; a detailed statement of all disbursements, and the condition of the fund, together with any other matters which such commissioner deems it proper to call to the attention of the governor, including any recommendations he may have to make, and the commissioner whenever required by the governor shall report to him as to any designated subject or matter, and furnish such information, as may be required. [Acts of 1915.]

§ 47. (Repealed by Acts of 1915.)

§ 48. **Absence of Commissioner.**—Whenever it shall appear that the commissioner will be absent or unable to act for one week or more, the secretary of the commissioner may be designated by the commissioner to act during his

absence or inability to act, and during such period he shall have all the duties and powers of the commissioner. [Acts of 1915.]

§ 49. Penalty for failure to report—False statement.—Any person, firm or corporation, knowingly failing to make any report or perform any duty required by the commissioner within the time specified, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than twenty-five hundred dollars. Any person, or firm, or the officer of any corporation, who knowingly makes a false report or statement under oath, or affidavit respecting any information required by the commissioner, or who shall knowingly testify falsely in any proceeding before the commissioner, shall be deemed guilty of perjury and upon conviction thereof shall be punished as provided by law. [Acts of 1915.]

§ 50. Penalty for seeking undue compensation.—Any person who shall knowingly secure or attempt to secure larger compensation, or compensation for a longer term than he is entitled to, from said workmen's compensation fund, or knowingly secure or attempt to secure compensation from said fund when he is not entitled to any, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding five hundred dollars or imprisoned not exceeding twelve months, or both, in the discretion of the court, and shall from and after such conviction, cease to receive any compensation from such fund. [Acts of 1913.]

§ 51. Surplus funds—Investment.—Whenever there shall be in the state treasury any funds belonging to the workmen's compensation fund not likely, in the opinion of the commissioner, to be required for immediate use, it shall be the duty of the board of public works, when so requested by the commissioner to invest the same as prescribed in section twenty hereof. Whenever it may become necessary or expedient to use any of the funds so invested, the board of public works shall, when requested by the commissioner, collect, sell or otherwise realize upon any investment to the amount deemed necessary or expedient to use. [Acts of 1915.]

§ 52. Employers in interstate commerce.—In case any employer within the meaning of this act is also engaged in interstate or foreign commerce, this act shall apply to him, only to the extent that his mutual connection with work in this state is clearly separable and distinguishable from his interstate work, and in such case such employer and any of his employees thus engaged in both intrastate and interstate work, may with the approval of the commissioner elect to pay into the fund the premiums provided by this act on account of work done in this state only, by filing written acceptances, or a joint election with the commissioner, and such election when filed and approved by the commissioner shall subject the acceptors irrevocably to the provisions of the act to all intents and purposes as if they had been originally included in its terms. Payments of premiums shall be on the basis of the pay-roll of the employees who accept as aforesaid, for work done in this state only. [Acts of 1915.]

§ 53. Validity of Act.—If any employer shall be adjudicated to be outside the lawful scope of this act, the act shall not apply to him or his employee; or if any employee shall be adjudicated to be outside the lawful scope of this act, because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this act in other respects, and in every such case an accounting in accordance with the justice of the

case shall be had of moneys received. If the provisions of this act for the creation of the fund, or the provisions of this act making the compensation to the employé provided in it exclusive of any other remedy on the part of the employé shall be held invalid, the entire act shall be thereby invalidated and an accounting according to the justice of the case shall be had of money received. In other respects an adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any part thereof. [Acts of 1913.]

§ 54. **Substitute schemes.**—Notwithstanding anything contained in this act, employers subject to this act who are of sufficient financial responsibility to insure the payment of compensation to injured employees and the dependents of fatally injured employees, whether in the form of pecuniary compensation or medical attention, funeral expenses or otherwise as herein provided, of the value at least equal to the compensation provided in this act, or employers of such financial responsibility who maintain their own benefit funds or systems of compensation, to which their employees are not required or permitted to contribute, or such employers as shall furnish bond or other security to insure such payments, may, upon a finding of such facts by the compensation commissioner, elect to pay individually and directly or from such benefit funds, department or association the said compensation and expenses to injured employees or fatally injured employees' dependents; and the compensation commissioner shall require such security or bond from said employer to be approved by him and of such amount as is by him considered adequate and sufficient to compel or secure to said employees, or their dependents, payment of the compensation and expenses herein provided for, which shall in no event be less than the compensation paid or furnished out of the state workmen's compensation fund in similar cases, to injured employees or the dependents of fatally injured employees whose employers contribute to said fund; provided, that any employer electing under this section shall on or before the twenty-fifth day of each month, for the preceding month, file with the commissioner a sworn statement of the total earnings of all his employees subject to this act for such preceding month and shall pay into the workmen's compensation fund a sum sufficient to pay his proper proportion of the expense of the administration of this act, as may be determined by the commissioner. The commissioner shall make and publish rules and regulations governing the mode and manner of making application and the nature and extent of the proof required to justify the finding of facts by said commissioner, to consider and pass upon such election by employers subject to this act, which said rules and regulations shall be general in their application; and any employer subject to this act who shall elect to carry his own risk and who has complied with the requirements of this section and the rules of the compensation commissioner shall not be liable to respond in damages at common law or by statute for the injury or death of any employee, however, occurring, after such election and during the period that he is allowed to carry his own risk by said commissioner; provided, the injured employee has remained in his service with notice given, as provided for in section twenty-three of this act, that his employer has elected to carry his own risk as herein provided. The continuation in the service of such employer with such notice shall be deemed a waiver by the employee and by the parents of any minor employee of the right of

action, as aforesaid, which the employee or his or her parents would otherwise have.

And, provided, further, that any employer whose record upon the books of the public service commission or compensation commissioner shows a liability against the workmen's compensation fund, incurred on account of injury to or death of any of his employees, in excess of premiums paid by said employer, shall not be granted the right to individually and directly or from such benefit funds, department or association, to compensate his injured employees and the dependents of his fatally injured employees until he has paid into the workmen's compensation fund the amount of said excess of liability over premiums paid, including his proper proportion of the liability incurred on account of explosions or catastrophes occurring within the state and charged against said fund.

And, provided, further, that in any case under the provisions of this section that shall require the payment of compensation or benefits by an employer in periodical payments, and the nature of the case makes it possible to compute the present value of all future payments, the commissioner may, in his discretion, at any time, compute and permit or require to be paid into the workmen's compensation fund an amount equal to the present value of all unpaid compensation for which liability exists, in trust; and thereupon such employer shall be discharged from any further liability upon such award, and payment of the same shall be assumed by the workmen's compensation fund. [Acts of 1915—Extraordinary Session.]

§ 55. (Repealed by Acts of 1915.)

Sec. 62 of the general appropriation bill of the regular session of 1915 and all other acts and parts of acts in conflict with this act are hereby repealed. [Acts of 1915—Extraordinary Session.]

WISCONSIN

WORKMEN'S COMPENSATION ACT

Section

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WORKMEN'S COMPENSATION ACT

(Laws 1911, cc. 50, 664, as amended by Laws 1913, c. 599, St. 1915, §§ 2394—1 to 2394—31, and Laws 1915, c. 241.)

§ 2394—1 [as amended]. **Abrogation of defenses.**—1. In any action to recover damages for a personal injury sustained within this state by an employee while engaged in the line of his duty as such, or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of ordinary care of the employer, or of any officer, agent, or servant of the employer, it shall not be a defense:

(1) That the employee either expressly or impliedly assumed the risk of the hazard complained of.

(2) When such employer has at the time of the accident in a common employment four or more employees, that the injury or death was caused in whole or in part by the want of ordinary care of a fellow servant.

(3) When such employer has at the time of the accident, in a common employment four or more employees, that the injury or death was caused in whole or in part by the want of ordinary care of the injured employee, where such want of ordinary care was not wilful.

2. Any employer who has elected to pay compensation as hereinafter provided shall not be subject to the provisions of this section 2394—1.

3. Subdivisions (1), (2) and (3) of subsection 1 of section 2394—1 of the statutes shall not apply to farm labor.

§ 2394—2. **No contract exemption.**—No contract, rule, or regulation, shall exempt the employer from any of the provisions of section 2394—1.

§ 2394—3. **Liability for compensation.**—Liability for the compensation hereinafter provided for, in lieu of any other liability whatsoever, shall exist against an employer for any personal injury accidentally sustained by his employee, and for his death, in those cases where the following conditions of compensation concur:

(1) Where, at the time of the accident, both the employer and employee are subject to the provisions of sections 2394—3 to 2394—31, inclusive.

(2) Where, at the time of the accident, the employee is performing service growing out of and incidental to his employment.

Every employee going to and from his employment in the ordinary and usual way, while on the premises of his employer, shall be deemed to be performing service growing out of and incidental to his employment.

(3) Where the injury is proximately caused by accident, and is not intentionally self-inflicted.

And where such conditions of compensation exist for any personal injury or death, the right to the recovery of such compensation pursuant to the provisions of sections 2394—3 to 2394—31, inclusive, and acts amendatory thereof, shall be the exclusive remedy against the employer for such injury or death; in all other cases, the liability of the employer shall be the same as if this and the succeeding sections of sections 2394—3 to 2394—31, inclusive, had not been passed, but shall be subject to the provisions of sections 2394—1 and 2394—2.

§ 2394—4. **"Employer" defined.**—The following shall constitute employers subject to the provisions of sections 2394—3 to 2394—31, inclusive, within the meaning of section 2394—3.

(1) The state, and each county, city, town, village, and school district therein.

(2) Every person, firm, and private corporation (including any public service corporation), who has any person in service under any contract of hire, express or implied, oral or written, and who, at or prior to the time of the accident to the employee for which compensation under sections 2394—3 to 2394—31, inclusive, may be claimed, shall, in the manner provided in section 2394—5, have elected to become subject to the provisions of sections 2394—3 to 2394—31, inclusive, and who shall not, prior to such accident, have effected a withdrawal of such election, in the manner provided in subsection 1 of section 2394—5.

§ 2394—5 [as amended]. **Election by employer.**—1. Such election on the part of the employer shall be made by filing with the industrial commission, a written statement to the effect that he accepts the provisions of sections 2394—3 to 2394—31, inclusive, the filing of which statement shall operate, within the meaning of section 2394—4, to subject such employer to the provisions of sections 2394—3 to 2394—31, inclusive, for the term of one year from the date of filing such statement and until the first day of July following, and thereafter, without further act on his part, for successive terms of one year each, beginning July first of each year, unless such employer shall,

at least * * * thirty days prior to the * * * first day of July of * * * any * * * year, file in the office of said commission a notice in writing to the effect that he desires to withdraw his election to be subject to the provisions of sections 2394—3 to 2394—31, inclusive.

2. On and after September 1, 1913, every employer of four or more employés in a common employment shall be deemed to have elected to accept the provisions of sections 2394—3 to 2394—31, inclusive, unless prior to that date such employer shall have filed with the industrial commission a notice in writing to the effect that he elects not to accept the provisions hereof. Provided, that any employer commencing business subsequent to September 1, 1913, may make his election not to become subject to sections 2394—3 to 2394—31, inclusive, at any time prior to becoming an employer of four or more employés in a common employment. Such employer may withdraw from the provisions of sections 2394—3 to 2394—31, inclusive, at the expiration of one year or at the expiration of any succeeding year in the manner provided in subsection 1 of section 2394—5. The provisions of this subsection shall not apply to farmers or to farm labor.

§ 2394—6. **Contractors and subcontractors.**—An employer subject to the provisions of sections 2394—3 to 2394—31, inclusive, shall be liable for compensation to an employee of a contractor or subcontractor under him who is not subject to sections 2394—3 to 2394—31, inclusive, and has not complied with the conditions of section 2394—24—2 in any case where such employer would have been liable for compensation if such employee had been working directly for such employer. The contractor or subcontractor shall also be liable for such compensation, but the employee shall not recover compensation for the same injury from more than one party. The employer who shall become liable for and pay such compensation may recover the same from such contractor or subcontractor for whom the employee was working at the time of the accident.

Section 2394—6 shall be in force as to all contracts made subsequent to August 31, 1913.

§ 2394—7. **“Employé” defined.**—The term “employee” as used in sections 2394—1 to 2394—31, inclusive, shall be construed to mean:

(1) Every person in the service of the state, or of any county, city, town, village, or school district therein, under any appointment, or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city, town, village, or school district therein. The state and any county or municipality may require a bond from a contractor to protect the state, county or municipality against compensation to employees of such contractor or employees of a subcontractor under him.

Policemen and firemen shall be deemed employees within the meaning of subdivision (1) of section 2394—7; provided, that any policeman or fireman claiming compensation under sections 2394—3 to 2394—31, inclusive, shall have deducted from such compensation any sum which such policeman or fireman may receive from any pension or other benefit fund to which the municipality may contribute.

(2) Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the state (who, for the purposes of section 2394—8, shall be considered the same and shall have

the same power of contracting as adult employees), but not including any person whose employment is but casual or is not in the usual course of the trade, business, profession, or occupation of his employer.

§ 2394—8. Election by employé.—Any employee as defined in subdivision (1) of section 2394—7 shall be subject to the provisions of sections 2394—3 to 2394—31, inclusive. Any employee as defined in subdivision (2) of section 2394—7 shall be deemed to have accepted and shall, within the meaning of section 2394—3, be subject to the provisions of sections 2394—3 to 2394—31, inclusive, if, at the time of the accident upon which liability is claimed:

(1) The employer charged with such liability is subject to the provisions of sections 2394—3 to 2394—31, inclusive, whether the employee has actual notice thereof or not; and

(2) Such employee shall not, at the time of entering into his contract of hire, express or implied, with such employer, have given to his employer notice in writing that he elects not to be subject to the provisions of sections 2394—3 to 2394—31, inclusive; or, in the event that such contract of hire was made in advance of such employer becoming subject to the provisions of sections 2394—3 to 2394—31, inclusive, such employee shall have given to his employer notice in writing that he elects to be subject to such provisions, or without giving either of such notices, shall have remained in the service of such employer for thirty days after the employer has filed with said commission an election to be subject to the terms of sections 2394—3 to 2394—31, inclusive, or when such employer has become subject to sections 2394—3 to 2394—31, inclusive, pursuant to subsection 2 of section 2394—5.

(3) The provisions of sections 2394—3 to 2394—31, inclusive, shall not apply to employees operating, running or riding upon, or switching freight or other trains, engines or cars for a railroad company operating a steam railroad as a common carrier, unless both employer and employee shall specifically, in writing, have voluntarily accepted the provisions of said sections, and have filed notice thereof with the industrial commission, and shall not apply to employees of such common carriers injured or killed while the common carrier and the employee are engaged in interstate commerce.

§ 2394—9 [as amended]. Scale of compensation.—Where liability for compensation under sections 2394—3 to 2394—31, inclusive, exists, the same shall be as provided in the following schedule:

(1) **Medical attendance.**—Such medical, surgical and hospital treatment, medicines, medical and surgical supplies, crutches, and apparatus, as may be reasonably required at the time of the injury, and thereafter during disability, but not exceeding ninety days, to cure and relieve from the effects of the injury, the same to be provided by the employer; and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employee in providing the same. Where the employer has knowledge of the injury and the necessity for treatment, his failure to tender the same shall constitute such neglect or refusal.

(2) If the accident causes disability, an indemnity which shall be payable as wages on the eighth day after the injured employee leaves work as the result of the injury, and weekly thereafter, which weekly indemnity shall be as follows:

(a) **Total disability.**—If the accident causes total disability, sixty-five per cent of the average weekly earnings during the period of such total disability;

provided, that, if the disability is such as not only to render the injured employee entirely incapable of work, but also so helpless as to require the assistance of a nurse, the weekly indemnity during the period of such assistance after the first ninety days shall be increased to one hundred per cent of the average weekly earnings.

(b) Partial disability.—If the accident causes partial disability, sixty-five per cent of the weekly loss in wages during the period of such partial disability.

(c) Total and partial.—If the disability caused by the accident is at times total and at times partial, the weekly indemnity during the periods of each such total or partial disability shall be in accordance with said subdivisions (a) and (b), respectively.

(d) Indemnity limitations.—Said subdivisions (a), (b) and (c) shall be subject to the following limitations:

In case of temporary or partial disability aggregate indemnity for injury to a single employee caused by a single accident shall not exceed four times the average annual earnings of such employee, and in case of permanent total disability aggregate indemnity for injury to a single employee caused by a single accident shall not exceed six times the average annual earnings of such employee.

Total disability defined.—Total blindness of both eyes, or the loss of both arms at or near the shoulder, or of both legs at or near the hip, or of one arm at the shoulder and one leg at the hip, shall constitute permanent total disability. This enumeration shall not be exclusive but in other cases the commission shall find the facts.

Fifteen-year limitation.—The aggregate disability period shall not, in any event, extend beyond fifteen years from the date of the accident.

Waiting period.—The weekly indemnity due on the eighth day after the employee leaves work as the result of the injury may be withheld until the twenty-ninth day after he so leaves work; if recovery from the disability shall then have occurred, such first weekly indemnity shall not be recoverable; if the disability still continues, it shall be added to the weekly indemnity due on said twenty-ninth day and be paid therewith.

If the period of disability does not last more than one week from the day the employee leaves work as a result of the injury, no indemnity whatever shall be recoverable.

(3) Death benefits.—Where death proximately results from the injury and the deceased leaves a person or persons wholly dependent upon him for support, the death benefit shall be as follows:

(a) In case the injured employee was permanently totally disabled, a sum equal to four times his average annual earnings, but which, when added to the disability indemnity paid and due at the time of death, shall not exceed six times his average annual earnings.

(b) In case the injured employee was not permanently totally disabled, such sum which, when added to the disability indemnity paid and due at the time of his death, shall equal four times his average annual earnings.

(4) Death other than proximate cause.—If death occurs to an injured employee other than as a proximate result of the accident, before disability indemnity ceases, death benefit shall be as follows:

(a) Where the accident proximately causes permanent total disability, it shall be the same as if the accident had caused death.

(b) Where the accident proximately causes permanent partial disability, liability shall exist for such benefit as shall fairly represent the proportionate extent of the impairment of earning capacity in the employment in which the deceased was working at the time of the accident or other suitable employment, caused by such disability.

(c) In case the deceased employé leaves no one wholly dependent upon him for support, but one or more persons partially dependent therefor, the death benefit shall not exceed four times the amount devoted by the deceased, during the year immediately preceding his death, to the support of such dependents and shall be apportioned according to the percentage of that amount devoted by the deceased to the support of such person or persons, for the year immediately prior to the accident, bears to the average annual earnings of the deceased. Where, by reason of minority, sickness or other causes during such year, the foregoing basis is unfair or inadequate, the death benefit shall be such sum as the commission may determine to be fair and just, considering the death benefits allowed in other cases where untoward causes do not exist.

(d) If the deceased employee leaves no person dependent upon him for support, and the accident proximately causes death, the death benefit shall consist of the reasonable expense of his burial, not exceeding one hundred dollars.

(e) Death benefit shall be paid in weekly instalments corresponding in amount to sixty-five per cent of the weekly earnings of the employee, until otherwise ordered by the commission.

(5) Schedule of fixed benefits.—In cases included by the following schedule, the compensation to be paid, subject to the provisions of this act for maximum and minimum payments, shall be sixty-five per cent of the average weekly earnings of the employee for the periods named in the schedule, to wit:

- The loss of one arm at or near the shoulder, 240 weeks;
- The loss of an arm at the elbow, 200 weeks;
- The loss of a forearm at the lower half thereof, 160 weeks;
- The loss of a hand, 160 weeks;
- The loss of a palm where the thumb remains, 80 weeks;
- The loss of a thumb and the metacarpal bone thereof, 60 weeks;
- The loss of a thumb at the proximal joint, 40 weeks;
- The loss of a thumb at the second or distal joint, 20 weeks;
- The loss of an index finger and the metacarpal bone thereof, 30 weeks;
- The loss of an index finger at the proximal joint, 20 weeks;
- The loss of an index finger at the second joint, 15 weeks;
- The loss of an index finger at the distal joint, 10 weeks;
- The loss of a second finger and the metacarpal bone thereof, 20 weeks;
- The loss of a middle finger at the proximal joint, 15 weeks;
- The loss of a middle finger at the second joint, 10 weeks;
- The loss of a middle finger at the distal joint, 5 weeks;
- The loss of a third or ring finger and the metacarpal bone thereof, 12 weeks;
- The loss of a ring finger at the proximal joint, 8 weeks;
- The loss of a ring finger at the second joint, 6 weeks;
- The loss of a ring finger at the distal joint, 4 weeks;
- The loss of a little finger and the metacarpal bone thereof, 15 weeks;
- The loss of a little finger at the proximal joint, 10 weeks;

The loss of a little finger at the second joint, 8 weeks;

The loss of a little finger at the distal joint, 4 weeks;

The loss of all the fingers of one hand where the thumb and palm remain, 60 weeks;

The loss of a leg at the hip joint, or so near thereto as to preclude the use of an artificial limb, 240 weeks;

The loss of a leg at or above the knee, where stump remains sufficient to permit the use of an artificial limb, 160 weeks;

The loss of a foot at the ankle, 120 weeks;

The loss of a great toe with the metatarsal bone thereof, 30 weeks;

The loss of a great toe at the proximal joint, 20 weeks;

The loss of a great toe at the second joint, 10 weeks;

The loss of any other toe with the metatarsal bone thereof, 12 weeks;

The loss of any other toe at the proximal joint, 4 weeks;

The loss of any other toe at the second or distal joint, 4 weeks;

The loss of all the toes of one foot, 40 weeks;

The loss of an eye by enucleation, 160 weeks;

The loss of the second eye, by enucleation, 320 weeks;

Total blindness of one eye, 120 weeks;

Total blindness of the second eye, 240 weeks;

Total deafness of both ears, 160 weeks;

Total deafness of one ear, 40 weeks;

Total deafness of the second ear, 120 weeks.

Disability through infection.—When by reason of infection or other cause not due to the neglect or misconduct of the injured employee, he is actually disabled longer than the time specified in the foregoing schedule for earning a wage, compensation shall be paid such employee for such loss of wage within the limits otherwise provided.

Paralysis.—For the purposes of this schedule permanent and complete paralysis of any member shall be deemed equivalent to the loss thereof.

Amputation.—Whenever an amputation is made between any two joints mentioned in this schedule (except amputations between the knee and hip joint) the resultant loss shall be estimated as if the amputation had been made at the joint nearest thereto.

Relative injury clause.—For all other injuries to the members of the body or its faculties which are specified in the foregoing schedule resulting in permanent disability, though the member be not actually severed or the faculty totally lost, compensation shall bear such relation to that named in the schedule as the disabilities bear to those produced by the injuries named in the schedule. Indemnity in such cases shall be determined by allowing weekly indemnity during the healing period resulting from the injury and the percentage of permanent disability resulting thereafter as found by the commission.

Facial disfigurements.—If an employé is seriously permanently disfigured about the face or head, the commission may allow such sum for compensation on account thereof, as it may deem just, not exceeding \$750.

Reductions for age.—In case of permanent injury to an employé who is over fifty-five years of age, the compensation herein shall be reduced by 5 per cent; in case he is over sixty years of age, by 10 per cent; in case he is over sixty-five years of age, by 15 per cent.

(a) **Penalties.**—Where injury is caused by the failure of the employer to comply with any statute of the state or any lawful order of the industrial commission, compensation as provided in sections 2394—3 to 2394—31, inclusive, shall be increased fifteen per cent.

(b) Where injury is caused by the wilful failure of the employé to use safety devices where provided by the employer, or

(c) Where injury results from the employé's wilful failure to obey any reasonable rule adopted by the employer for the safety of the employee, or

(d) Where injury results from the intoxication of the employee, the compensation provided herein shall be reduced fifteen per cent.

(e) **Payments in gross.**—Any time after six months has elapsed from the date of the injury the commission may order payment in gross or in such manner as it may determine to the best interest of the parties. When payment in gross is ordered, the commission shall fix the gross amount to be paid based on the present worth of partial payments, considering interest at three per cent per annum.

§ 2394—10 [as amended]. **Method of computation.**—1. The average weekly earnings referred to in section 2394—9 shall be one-fifty-second of the average annual earnings of the employé.

The average annual earnings for employés operating, running, riding upon, or switching passenger, freight or other trains, engines or cars for a railroad company operating a steam railroad as a common carrier, shall be taken at not less than \$500 nor more than \$1,250 per annum; and for all other employés such average annual earnings shall be taken at not less than \$375 nor more than \$750. Between said limits such average annual earnings shall be determined as follows:

(a) If the injured employee has worked in the employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he has earned in such employment during the days when so employed.

(b) If the injured employee has not so worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or a similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed.

(c) In cases where the foregoing methods of arriving at the average annual earnings of the injured employee cannot reasonably and fairly be applied, such average annual earnings shall be taken at such sum as, having regard to the previous earnings of the injured employee, and of other employees of the same or most similar class, working in the same or most similar employment, in the same or a neighboring locality, shall reasonably represent the average annual earning capacity of the injured employee at the time of the accident in the employment in which he was working at such time.

If an employee is a minor and is permanently disabled, his weekly earnings shall be determined on the basis of the earnings that such minor, if not disabled, probably would earn after attaining the age of 21 years.

(d) The fact that an employee has suffered a previous disability, or received compensation therefor, shall not preclude compensation for a later injury, or for death, but in determining compensation for the later injury, or death, his average annual earnings shall be such sum as will reasonably represent his average annual earning capacity at the time of the later injury, in the employment in which he was working at such time, and shall be arrived at according to, and subject to the limitations of, the previous provisions of this section.

2. The weekly loss in wages referred to in section 2394—9 shall consist of such percentage of the average weekly earnings of the injured employee, computed according to the provisions of this section, as shall fairly represent the proportionate extent of the impairment of his earning capacity in the employment in which he was working at the time of the accident, and other suitable employments, the same to be fixed as of the time of the accident, but to be determined in view of the nature and extent of the injury.

3. The following shall be conclusively presumed to be solely and wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she is living at the time of his death.

(b) A husband upon a wife with whom he is living at the time of her death.

(c) A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning), upon the parent with whom he or they are living at the time of the death of such parent, there being no surviving dependent parent. In case of divorce the charging of the full support and maintenance of a child upon one of the divorced parents shall be held to constitute a living with the parent so charged. In case there is more than one child thus dependent, the death benefit shall be divided between such dependents in such proportion as may be determined by the commission after considering the ages of such dependents and other facts bearing on such dependency.

In all other cases questions of entire or partial dependency shall be determined in accordance with the fact, as the fact may be at the time of the accident to the employé; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them and persons partially dependent, if any, shall receive no part thereof; and if there is more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

4. No person shall be considered a dependent unless a member of the family of the deceased employé, or a divorced spouse who has not remarried, or one who bears to him the relation of husband or widow, or lineal descendant, or ancestor, or brother, or sister.

5. Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the accident to the employee, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions; and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto or their legal guardians or trustees; provided that in case of the death of a dependent whose right to a death benefit has thus become fixed, so much of the same as is then unpaid shall be recoverable by and payable to his personal representatives in gross. No person shall be excluded as a dependent who is a non-resident alien.

6. No dependent of an injured employee shall be deemed, during the life of such employee, a party in interest to any proceeding by him for the enforcement or collection of any claim for compensation, nor as respects the compromise thereof by such employee.

§ 2394—11. **Method of filing claim.**—No claim to recover compensation under sections 2394—3, to 2394—31, inclusive, shall be maintained unless, within thirty days after the occurrence of the accident which is claimed to have caused the injury or death, notice in writing, stating the name and address of the person injured, the time and place where the accident occurred, and the nature of the injury, and signed by the person injured or by some one on his behalf, or in case of his death, by a dependent or some one on his behalf, shall be served upon the employer, either by delivering to and leaving with him a copy of such notice, or by mailing to him by registered mail a copy thereof in a sealed and postpaid envelope addressed to him at his last known place of business or residence. Such mailing shall constitute completed service. Provided, however, that any payment of compensation under sections 2394—3 to 2394—31, inclusive, in whole or in part, made by the employer before the expiration of said thirty days, shall be equivalent to the notice herein required; and provided, further, that the failure to give any such notice, or any defect or inaccuracy therein, shall not be a bar to recovery under sections 2394—3 to 2394—31, inclusive, if it is found as a fact in the proceedings for collection of the claim that there was no intention to mislead the employer, and that he was not in fact misled thereby; and provided, further, that if no such notice is given and no payment of compensation made, within two years from the date of the accident, the right to compensation therefor shall be wholly barred.

§ 2394—12. **Examination by physician.**—Wherever in case of injury the right to compensation under sections 2394—3 to 2394—31, inclusive, would exist in favor of any employee, he shall, upon the written request of his employer, submit from time to time to examination by a regular practicing physician, who shall be provided and paid for by the employer, and shall likewise submit to examination from time to time by any regular physician selected by said industrial commission or a member or examiner thereof. The employee shall be entitled to have a physician, provided and paid for by himself, present at any such examination. So long as the employee, after such written request of the employer, shall refuse to submit to such examination, or shall in any way obstruct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended; and if he shall refuse to submit to such examination after direction by the commission, or any member or examiner thereof, or shall in any way obstruct the same, his right to the weekly indemnity which shall accrue and become payable during the period of such refusal or obstruction, shall be barred. Any physician who shall make or be present at any such examination may be required to testify as to the results thereof. Any physician having attended an employee in a professional capacity may be required to testify before the commission when it shall so direct.

§ 2394—13. **Administration.**—Sections 2394—3 to 2394—31, inclusive, shall be administered by the industrial commission. A majority of the commission shall constitute a quorum for the exercise of any of the powers or authority conferred by sections 2394—3 to 2394—31, inclusive, and an order

or award made by a majority shall be valid. In case of a vacancy, the remaining two members of the commission shall exercise all the powers and authority of the commission until such vacancy is filled.

§ 2394—14. Procedure—Seal—Traveling expenses.—Subject to the provisions of sections 2394—3 to 2394—31, inclusive, the commission may adopt its own rules of procedure and may change the same from time to time in its discretion. The commission when it shall deem it necessary to expedite its business, may from time to time, employ one or more expert examiners for such length of time as may be required, such examiners to be exempt from the operation of sections 990—1 to 990—32, inclusive, of the statutes. It may employ such clerical help as it may deem necessary. It shall fix the compensation of all assistants so appointed. It shall provide itself with a seal for the authentication of its orders, awards and proceedings, upon which shall be inscribed the words "Industrial Commission—Wisconsin—Seal." The members and assistants of the commission shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the commission; but such expenses shall be sworn to by the person who incurred the same, and be approved by the chairman of the commission, before payment is made. All salaries and expenses authorized by sections 2394—3 to 2394—31, inclusive, shall be audited and paid out of the general funds of the state, the same as other general state expenses are audited and paid.

§ 2394—15 [as amended]. 1. Submission of disputes.—Any dispute or controversy concerning compensation under sections 2394—3 to 2394—31, inclusive, including any in which the state may be a party, shall be submitted to said industrial commission in the manner and with the effect provided in sections 2394—3 to 2394—31, inclusive. Every compromise of any claim for compensation under sections 2394—3 to 2394—31, inclusive, shall be subject to be reviewed by, and set aside, modified or confirmed by the commission upon application made within one year from the time of such compromise.

2. Reasonableness of medical bills.—The industrial commission shall have jurisdiction to pass upon the reasonableness of medical and hospital bills in all cases of dispute where compensation is paid, in the same manner and to the same effect as it passes upon compensation. [Laws 1915, c. 241.]

§ 2394—16. Notice of hearing.—Upon the filing with the commission by any party in interest of an application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, it shall fix a time for the hearing thereof, which shall not be more than forty days after the filing of such application. The commission shall cause notice of such hearing, embracing a general statement of such claim, to be given to each party interested, by service of such notice on him personally or by mailing a copy thereof to him at his last known post-office address at least ten days before such hearing. Such hearing may be adjourned from time to time in the discretion of the commission, and hearings may be held at such places as the commission shall designate. Either party shall have the right to be present at any hearing, in person or by attorney, or any other agent, and to present such testimony as may be pertinent to the controversy before the commission; but the commission, may, with or without notice to either party, cause testimony to be taken, or an inspection of the premises where the injury occurred to be had, or the time books and pay roll of the employer to be examined by any member of the commission or any examiner appointed by it,

and may from time to time direct any employee claiming compensation to be examined by a regular physician; the testimony so taken, and the results of any such inspection or examination, to be reported to the commission for its consideration upon final hearing. All ex parte testimony taken by the commission shall be reduced to writing and either party shall have opportunity to rebut the same on final hearing. The commission or any member thereof, or any examiner appointed thereby, shall have power and authority to issue subpoenas, to compel the attendance of witnesses or parties, and the production of books, papers, or records, and to administer oaths.

Any person who shall wilfully fail or neglect to appear and testify or to produce books, papers and records as required by such subpoena duly served upon him, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned in the county jail not longer than thirty days for each such offense. Each day such person shall so refuse or neglect shall constitute a separate offense.

The circuit court of the county wherein such person resides, upon application of the commission or any member thereof or any such examiner, may issue an order compelling the attendance and testimony of witnesses and the production of books, papers and records before such commission or any member thereof or any such examiner.

§ 2394—17. **Findings and awards.**—After final hearing by said commission, it shall make and file (1) its findings upon all the facts involved in the controversy, and (2) its award, which shall state its determination as to the rights of the parties. Pending the hearing and determination of any controversy before it, the commission shall have power to order the payment of such, or any part, of the compensation, which is or may fall due, as to which the party from whom the same is claimed does not deny liability in good faith within ten days after the giving of notice of hearing provided for in the preceding section; and if the same shall not be paid as required by such order, the facts with respect to the liability therefor, and the determination of the commission as to the rights of the parties, shall be embraced in, and constitute a part of, its finding and award; and the commission shall have the power to include in its award, as a penalty for noncompliance with any such order, if it shall find that noncompliance was not in good faith, not exceeding twenty-five per cent of each amount which shall not have been paid as directed thereby.

The commission may on its own motion, modify or change its order, findings or award at any time within ten days from the date thereof if it shall discover any mistake therein.

§ 2394—18. **Filing of judgment.**—Either party may present a certified copy of the award to the circuit court for any county, whereupon said court shall, without notice, render a judgment in accordance therewith; which judgment, until and unless set aside as hereinafter provided, shall have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with like effect, be entered and docketed.

§ 2394—19. **Review by court.**—1. The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive; and the order or award, whether judgment has been rendered thereon or not, shall be subject to review only in the manner and upon the grounds

following: Within twenty days from the date of the order or award, any party aggrieved thereby may commence, in the circuit court for Dane county, an action against the commission for the review of such order or award, in which action the adverse party shall also be made defendant. In such action a complaint, which shall state the grounds upon which a review is sought, shall be served with the summons. Service upon the secretary of the commission or any member of the commission, shall be deemed completed service. The commission shall serve its answer within twenty days after the service of the complaint, and, within the like time, such adverse party shall, if he so desires, serve his answer to said complaint. With its answer, the commission shall make return to said court of all documents and papers on file in the matter, and of all testimony which may have been taken therein, and of its order, findings and award. Such return of the commission when filed in the office of the clerk of the circuit court shall, with the papers mentioned in section 2398 of the statutes, constitute a judgment roll in such action; and it shall not be necessary to settle a bill of exceptions in order to make such return part of the record of such court in such action. Said action may thereupon be brought on for hearing before said court upon such record by either party on ten days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge. Upon such hearing, the court may confirm or set aside such order or award, and any judgment which may theretofore have been rendered thereon; but the same shall be set aside, only upon the following grounds:

- (1) That the commission acted without or in excess of its powers.
- (2) That the order or award was procured by fraud.
- (3) That the findings of fact by the commission do not support the order or award.

2. Any action commenced in court under section 2394—19 to set aside or modify any order or award of the commission must be brought to trial within thirty days after issue shall be joined, unless continued on order of the court for good cause shown. No continuance shall be for longer than thirty days at one time, and further continuance may be had only upon order of the court for cause.

3. Upon the trial of any such action the court shall disregard any irregularity or error of the commission unless it be made to affirmatively appear that the plaintiff was damaged thereby.

4. The record in any case shall be transmitted to the commission within twenty days after the order or judgment of the court, unless appeal shall be taken from such order or judgment.

§ 2394—20. **Remanding of record.**—Upon the setting aside of any order or award the court may recommit the controversy and remand the record in the case to the commission, for further hearing or proceedings; or it may enter the proper judgment upon the findings, as the nature of the case shall demand. An abstract of the judgment entered by the trial court upon the review of any order or award shall be made by the clerk thereof upon the docket entry of any judgment which may theretofore have been rendered upon such order or award, and transcripts of such abstract may thereupon be obtained for like entry upon the dockets of the courts of other counties.

§ 2394—21. **Appeal from award.**—Said commission, or any party aggrieved by a judgment entered upon the review of any order or award, may

appeal therefrom within the time and in the manner provided for an appeal from the orders of the circuit court, except that it shall not be necessary for said commission or any party to said action to execute, serve or file the undertaking required by section 3052 of the statutes in order to perfect such appeal; but all such appeals shall be placed on the calendar of the supreme court and brought to a hearing in the same manner as state causes on such calendar.

§ 2394—22. **Fees and costs.**—No fees shall be charged by the clerk of any court for the performance of any official service required by sections 2394—3 to 2394—31, inclusive, except for the docketing of judgments and for certified copies of transcripts thereof. In proceedings to review an order or award, costs as between the parties shall be allowed or not in the discretion of the court, but no costs shall be taxed against said commission. In any action for the review of an order or award, and upon any appeal therein to the supreme court, it shall be the duty of the attorney-general, personally, or by an assistant, to appear on behalf of the commission, whether any other party defendant shall have appeared or be represented in the action or not. Unless previously authorized by the commission, no lien shall be allowed, nor any contract be enforceable, for any contingent attorney's fee for the enforcement or collection of any claim for compensation where such contingent fee, inclusive of all taxable attorney's fees paid or agreed to be paid for the enforcement or collection of such claim, exceeds ten per cent of the amount at which such claim shall be compromised, or of the amount awarded, adjudged or collected.

§ 2394—23. **Assignment of claim.**—No claim for compensation under sections 2394—3 to 2394—31, inclusive, shall be assignable before payment, but this provision shall not affect the survival thereof; nor shall any claim for compensation, or compensation awarded, adjudged or paid, be subject to be taken for the debts of the party entitled thereto.

§ 2394—24 [as amended]. 1. **Preference of claim.**—The whole claim for compensation for the injury or death of any employee or any award or judgment thereon, shall be entitled to a preference over the unsecured debts of the employer hereafter contracted, but this section shall not impair the lien of any judgment entered upon any award.

1a. **Guarantee of payments.**—In all cases where an employer shall become liable to an employé for compensation in weekly indemnity extending over a period of six months or more, he may be required by the industrial commission, in its discretion, to purchase an annuity therefor, with a domestic corporation, duly authorized to issue annuities, or to furnish a bond, for the payment of such compensation, as shall be required and approved by the industrial commission. [Laws 1915, c. 241.]

2. **Insurance of liability.**—An employer liable under this act to pay compensation shall insure payment of such compensation in some company authorized to insure such liability in this state unless such employer shall be exempted from such insurance by the industrial commission. An employer desiring to be exempt from insuring his liability for compensation shall make application to the industrial commission showing his financial ability to pay such compensation, whereupon the commission by written order may make such exemption. The commission may from time to time require further statement of financial ability of such employer to pay compensation and may upon

ten days' notice in writing, revoke its order granting such exemption, in which case such employer shall immediately insure his liability.

3. Penalty for non-compliance.—An employer who shall fail to comply with the provisions of subsection 2 of section 2394—24 shall be guilty of a misdemeanor and upon conviction thereof shall forfeit twenty-five dollars for each offense. Each day's failure shall be a separate offense. Upon complaint of the commission, such forfeitures may be collected by the state in an action in debt.

§ 2394—25. Third party liability.—1. The making of a lawful claim against an employer for compensation under sections 2394—3 to 2394—31, inclusive, for the injury or death of his employee shall operate as an assignment of any cause of action in tort which the employee or his personal representative may have against any other party for such injury or death; and such employer may enforce in his own name the liability of such other party.

2. The making of a claim by an employee against a third party for damages by reason of an accident covered by sections 2394—3 to 2394—31, inclusive, shall operate as a waiver of any claim for compensation against the employer.

§ 2394—26. Insurance provisions.—Nothing in sections 2394—3 to 2394—31, inclusive, shall affect the organization of any mutual or other insurance company, or any existing contract for insurance of employers' liability, nor the right of the employer to insure in mutual or other companies, in whole or in part, against such liability, or against the liability for the compensation provided for by sections 2394—3 to 2394—31, inclusive, or to provide by mutual or other insurance, or by arrangement with his employees, or otherwise, for the payment to such employees, their families, dependents or representatives, of sick, accident or death benefits in addition to the compensation provided for by sections 2394—3 to 2394—31, inclusive. But liability for compensation under sections 2394—3 to 2394—31, inclusive, shall not be reduced or affected by any insurance, contribution or other benefit whatsoever, due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer; and in addition thereto, the right to enforce in his own name, in the manner provided in sections 2394—3 to 2394—31, inclusive, the liability of any insurance company which may, in whole or in part, have insured the liability for such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance company, shall, to the extent thereof, be a bar to recovery against the other of the amount so paid, and provided, further, that as between the employer and the insurance company, payment by either directly to the employee, or to the person entitled to compensation, shall be subject to the conditions of the insurance contract between them.

§ 2394—27. 1. Requisites of insurance contracts.—Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of sections 2394—3 to 2394—31, inclusive, and provisions thereof inconsistent with sections 2394—3 to 2394—31, inclusive, shall be void. No company shall enter into any such contract of insurance unless such company shall have been approved by the commissioner of insurance, as provided by law. For the purposes of sections 2394—3 to 2394—31, inclusive, each employee shall constitute

a separate risk within the meaning of section 1898d of the statutes; provided, that at least five employers shall join in the organization of a mutual company under subdivision (5) of section 1897 and no such company organized by employers shall be licensed or authorized to effect such insurance unless such company shall have in force or put in force simultaneously, insurance on at least one thousand five hundred separate risks.

2. Examinations of records.—The industrial commission, by itself or its employees, may examine from time to time the books and records of any liability insurance company insuring liability or compensation for an employer in this state. Any such company that shall refuse or fail to allow the industrial commission to examine its books and records or to file the report required by subsection 3 of section 2394—27, shall have its license to do business in the state revoked.

3. Every company transacting the business of compensation insurance, in addition to all other reports required by law to be made, shall, on or before the first day of March in each year, on blanks furnished for such purpose, make and file with the industrial commission an annual statement of its business and accident experience covering the year ending on the preceding thirty-first day of December.

4. Filing of insurance rates.—Every insurance company, including any interinsurer or other insurer authorized to do business within this state and insuring the liability of employers for compensation as herein provided, shall file with the industrial commission its classifications of risks and rates of premium relating thereto, and any changes in or additions to such classifications or rates of premium. No such company shall issue in this state any policy insuring against such liability for compensation except upon the classifications and rates of premiums so filed with the industrial commission. No such company shall discriminate between insured having risks in the same class and degree of hazard by the granting of any rebate or deduction in such rate of premium, or by any change of classification for the purpose of granting such deduction, or in any other manner. Any such company or agent violating any provision of this section shall be subject to the penalties provided by section 1955o. Upon the filing of any complaint with the commissioner of insurance alleging any violation of this section, proceedings shall be had thereon as provided for violations of section 1955o.

§ 2394—28. Release from liability.—Any employer against whom liability may exist for compensation under sections 2394—3 to 2394—31, inclusive, may, with the approval of the industrial commission, be relieved therefrom by:

(1) Depositing the present value of the total unpaid compensation for which such liability exists, assuming interest at three per cent per annum, which such trust company of this state as shall be designated by the employee (or by his dependents in case of his death, and such liability exists in their favor), or in default of such designation by him (or them) after ten days' notice in writing from the employer, with such trust company of this state as shall be designated by the commission; or

(2) By the purchase of an annuity, within the limitations provided by law, in any insurance company granting annuities and licensed in this state, which may be designated by the employee, or his dependents, or the commission, as provided in subdivision (1) of section 2394—28.

§ 2394—29. **Notice of election.**—The commission shall cause to be printed and furnished free of charge to any employer or employee such blank forms as it shall deem requisite to facilitate or promote the efficient administration of sections 2394—3 to 2394—31, inclusive; it shall provide such proper record books or records as it shall deem required for the proper and efficient administration of sections 2394—3 to 2394—31, inclusive; all such records to be kept in the office of the commission. The commission shall cause notice of employers subject to this act to be given to employees, in such manner as the commission shall deem most effective; and the commission shall likewise cause notice to be given of the filing of any withdrawal of such election; but notwithstanding the failure to give, or the insufficiency of, any such notice, knowledge of the fact shall conclusively be imputed to all employees.

§ 2394—30. **Appropriation.**—A sum sufficient to carry out the provisions of sections 2394—3 to 2394—31, inclusive, is hereby appropriated out of any money in the treasury not otherwise appropriated.

§ 2394—31. **Effect of failure of part of Act.**—The legislature intends the contingency in subdivision (3) of section 2394—1 to be a separable part thereof, and the subdivision likewise separable from the rest of sections 2394—1 to 2394—31, inclusive, and that part of said section 2394—1 that follows subdivisions (3), likewise separable from the rest of sections 2394—1 to 2394—31, inclusive; so that any part of said subdivision, or the whole, or that part which follows said subdivision (3), may fail without affecting any other part of sections 2394—1 to 2394—31, inclusive.

WYOMING

WORKMEN'S COMPENSATION LAW

Section

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WORKMEN'S COMPENSATION LAW

(*Laws 1915, c. 124, House Bill No. 147.*)

An Act providing compensation for injuries or death resulting from injuries, of workmen from accident occurring in extra-hazardous employments; defining extra-hazardous employments and providing for the accumulation, maintenance and administration of funds in the State Treasury for the payment of such compensation and repealing Sections 3526, 4291 and 4292 of Wyoming Compiled Statutes, 1910, and all other laws or parts of laws relating to damages for injuries or death from injuries, or in anywise in conflict with this Act, in so far as they are applicable to extra-hazardous employments.

Be it Enacted by the Legislature of the State of Wyoming:

§ 1. **Name of Act.**—This Act shall be known as the "Workmen's Compensation Law."

§ 2. **General Provisions.**—Compensation herein provided for shall be payable to persons injured in extra-hazardous employments, as herein defined, or the dependent families of such, as die, as the result of such injuries, except in case of injuries due solely to the culpable negligence of the injured employee. Said compensation shall be payable from funds in the State Treasury to be accumulated and maintained in the manner herein provided. The right of each employee to compensation from such funds shall be in lieu of and shall take the place of any and all rights of action against any employer

contributing, as required by law to such fund in favor of any such person or persons by reason of any such injury or death. Sections 3526, 4291 and 4292 and all other laws or parts of laws relating to damages for injuries or death from injuries or in anywise in conflict with this Act are hereby repealed, as to the employments, employers and employees coming within the terms of this Act.

§ 3. Provisions exclusive, compulsory and obligatory.—The rights and remedies provided in this Act for an employee on account of an injury shall be exclusive of all other rights and remedies of such employee, his personal or legal representatives or dependent family at common law or otherwise on account of such injury; and the terms, conditions and provisions of this Act for the payment of compensation and the amount thereof for injuries sustained or death resulting from such injuries shall be exclusive, compulsory and obligatory upon both employers and employees coming within the provisions hereof.

§ 4. Extra-hazardous occupations.—The extra-hazardous occupations to which this Act is applicable are as follows: factories, mills and workshops where machinery is used; foundries, blast furnaces; mines, oil wells; gas works; natural gas plants; water works; reduction works; breweries; elevators; dredges; smelters; powder works; laundries operated by power; quarries; engineering works; logging; lumbering and saw mill operations; street and interurban railroads not engaged in interstate commerce; buildings being constructed, repaired, moved or demolished; telephone, telegraph, electric light or power plants or lines; steam heating or power plants; railroads not engaged in interstate commerce; bridge building and all employments wherein a process requiring the use of any dangerous explosive or inflammable materials is carried on, which is conducted for the purpose of business, trade or gain, each of which employments is hereby determined to be extra-hazardous and in which from the nature, conditions or means of prosecution of the work therein required risks to the life and limb of the workman engaged therein are inherent, necessary or substantially unavoidable. This Act shall not apply in any case where the injury occurred before this Act takes effect and all rights, which have accrued by reason of any such injury prior to the taking effect of this Act shall be saved the remedies now existing therefor. This Act shall only apply to the employers by whom five or more workmen have been employed continuously for more than one month at the time of the accident; provided, that this Act shall apply to the employments wherein dangerous explosives are used or where the employment requires the performance of services upon derricks, scaffolding, poles or other structures ten feet or more above the surface of the ground without regard to the number of workmen employed.

§ 5. Exceptions.—This Act shall not be construed to apply to business or employments, which according to law are so engaged in interstate commerce, as to be not subject to the legislative power of the State nor to persons injured while they are so engaged.

§ 6. Definitions.—In this Act unless the context otherwise requires:

(a) "Factories" mean any premises wherein power is used in manufacturing, making, altering, adapting, ornamenting, finishing, repairing or renovating any article for the purpose of trade or gain or the business carried on therein, including expressly any brick yard, meat-packing house, foundry,

smelter, ore reduction works, lime-burning plant, stucco plant, steam heating plant, electric lighting or power plant including all work in or directly connected with the construction, installation, operation, alteration, removal or repair of wires, cables, switch-boards or apparatus used for the transmission of electric current, and water power plant, including towers and stand pipes, powder plant, blast furnace, paper mill, printing plant, flour mill, glass factory, cement plant, artificial gas plant, machine or repair shop, salt plant, oil refinery plant and chemical manufacturing plant.

(b) "Work shop" means any yard, plant, premises, room, or place where power driven machinery is employed and manual labor is exercised by way of trade or gain or otherwise incidental to the process of making, altering, repairing, printing, or ornamenting, finishing or adapting for sale or otherwise any article or part of article, over which premises, room or place the employer of the person working therein has the right of access or control.

(c) "Mill" means any plant, premises, room or place where machinery is used, any process of machinery, changing, altering or repairing any article or commodity for sale or otherwise together with the yards and premises, which are part of the plant including elevators, warehouses and bunkers, saw mill, sash factory or other work in the lumber industry.

(d) "Mine" means any opening in the earth for the purpose of extracting iron, oil, coal or other minerals and all underground workings, slopes, drifts, shafts, galleries, wells and tunnels, and other ways, cuts and openings connected therewith, including those in the course of being opened, sunk or driven, and includes all the appurtenant structures or machinery at or about the openings of the mine, and any adjoining adjacent work place where the material from a mine is prepared for use or shipment.

(e) "Quarry" means any place, not a mine, where stone, slate, clay, sand, gravel or other solid material is dug or otherwise extracted from the earth for the purpose of trade or bargain or of the employer's trade or business.

(f) "Building work" means any work in the erection, construction, extension, decoration, alteration, repair or demolition of any building or structural appurtenances.

(g) "Engineering work" means any work in the construction, alteration, extension, repair or demolition of a railway (as hereinbefore defined) bridge, jetty, dike, dam, reservoir, underground conduit, sewer, oil or gas well, oil tank, gas tank, water tank or tower, any caisson work or work in artificially compressed air, any work in dredging, work on log or lumber rafts or booms; pile driving, moving buildings, moving safes, or in laying, repairing or removing, underground pipes and connections, the erection, installing, repairing, or removing of boilers, furnaces, engines and power machinery (including belting and other connections) and any work in grading or excavating where shoring is necessary or power machinery or blasting powder, dynamite or other high explosives is in use (excluding mining and quarrying).

(h) "Employer" includes any person, or body of persons corporate or incorporate, and the legal representatives of a deceased employer or the receiver or trustee of a person, corporation, association or partnership.

(i) "Workman" means any person, who has entered into the employment of or works under contract of service or apprenticeship with an employer, except a person whose employment is purely casual and not for the purpose of the employer's trade or business or those engaged in clerical work, and not subject

to the hazards of the business, or one holding an official position or standing in a representative capacity of the employer. The term "workman" shall include "employee" and shall include the singular and plural of both sexes. Any reference to a workman, who has been injured shall, where the workman is dead, include a reference to his "dependent family," as hereinafter defined, or to his legal representative or where the workman is a minor or incompetent to his guardian or next friend.

(j) "Dependent families" as used in this Act means such members of the workman's family, as were wholly or in part dependent upon the workman for support at the time of the injury and shall include widow or husband, as the case may be, and children, or if no widow, husband or children, the parents of the injured workman, if actually dependent upon him for support at the time of the injury; if it be shown that the surviving spouse wilfully deserted deceased without fault upon the part of the deceased, such surviving spouse will not be regarded, as a dependent in any degree. No surviving spouse shall be entitled to the benefits of this Act, unless she shall have been married to the deceased at the time of the injury.

(k) "Child or children" means such that are under sixteen (16) years of age (and over said age, if physically or mentally incapacitated from earning) and shall also include legitimate children of the injured workman born after his death from injury. In other cases questions of family dependency in whole or in part shall be determined in accordance with the fact, as the case may be at the time of the injury; the foregoing definition of "dependent families" shall not include any of the persons named, who are aliens residing beyond the jurisdiction of the United States of America, except a surviving widow, or children under sixteen (16) years of age and as to such non-resident aliens the rate of compensation shall not exceed twenty-five per cent (25%) of the rates of compensation herein provided.

(l) The words "injuries sustained in extra-hazardous employment," as used in this Act shall include death resulting from injury, and injuries to employees, as a result of their employment and while at work in or about the premises occupied, used or controlled by the employer, and injuries occurring elsewhere while at work in places where their employer's business requires their presence and subjects them to extra-hazardous duties incident to the business, but shall not include injuries of the employees occurring while on his way to assume the duties of his employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence.

(m) The words "injury and personal injury" shall not include injury caused by the wilful act of a third person directed against an employee for reasons personal to such employee, or because of his employment; nor a disease, except, as it shall directly result from an injury incurred in the employment.

(n) "Invalid" means one who is physically or mentally incapacitated from earning wages.

§ 7. Guardian may act.—In case an injured workman is mentally incompetent or a minor, or where death results from the injury, in case any of his dependents, as herein defined be mentally incompetent or a minor, at the time when any right or privilege accrues to him under this Act, his guardian may, in his behalf, claim and exercise such right or privilege and no limitation of time, in this Act provided for, shall run, so long, as such incompetent or minor has no guardian.

§ 8. If other than employer is liable.—Where an employee coming under the provisions of this Act received an injury under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, and no legal liability attaching to the employer, then and in such case such employee shall be left to his remedy at law against such other person, and compensation shall not be payable under this Act.

§ 9. This act governs.—No contract, rule, regulation or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this Act except as herein provided.

§ 10. Blank forms supplied by the state treasurer.—It shall be the duty of the State Treasurer to prepare, cause to be printed and supplied free for use in the administration of this law such blank forms, as may be needed by employers for reporting and certifying pay-rolls of persons employed by them in extra-hazardous employments and for reporting injuries; and forms for use of injured persons in making claims for compensation; also to provide himself with such other books, records or forms, as may be deemed necessary to expedite the transaction of business under the provisions of this Act.

§ 11. Employer's report of accident.—Whenever an accident occurs causing injury to any workman engaged in any of the extra-hazardous employments defined by this Act, it shall be the duty of the employer within 20 days thereafter to make a report of such accident and the injury resulting therefrom and to file said report in the office of the Clerk of the District Court of the County wherein such accident occurred, which report shall state:

(1) The name of the injured workman and the time, cause and nature of the accident and injury; also whether the injury has disabled the workman from continuing the performance of his duties.

(2) Whether the accident occurred while the workman was engaged in the duties of his employment, and grew out of the employment.

(3) The nature of the employment and duties and how long the workman had been engaged in the service of such employer.

(4) Whether the accident was or was not due solely to the culpable negligence of the injured employee and if so, a statement of the facts.

(5) Whether the injured workman is married or single; if married whether he has a dependent family and if so, the names of the persons comprising such dependent family and their place of residence.

(6) Whether the injured workman claims compensation under this Act, and whether his right to compensation or the amount of compensation is disputed by his employer.

Said report may be made upon a printed form prepared by the State Treasurer for such purposes, and shall be verified as pleadings in civil actions. Failure or neglect on the part of any employer whose business or occupation is one enumerated and defined herein, as being extra-hazardous, to report accidents causing injury to any of his employees, shall be a misdemeanor and upon conviction such employer shall be punished by a fine of not exceeding Five Hundred (\$500.00) Dollars.

§ 12. Investigation by the district judge—procedure in disputed cases.—Whenever an injury or death resulting from injury is reported to the Clerk of the District Court of the County wherein such injury occurred, in accordance with the preceding Section, it shall be the duty of said Clerk to at

once notify the Judge of said Court, that such injury report has been filed in his office. It shall thereupon be the duty of said Judge to investigate the nature of said injury and claim for compensation at the earliest possible date, in such a manner, as he may deem necessary to ascertain whether the claim for compensation or the amount thereof is disputed by the employer, and if there be no dispute, as to the right of the injured workman to receive compensation, or as to the amount thereof and the claim appear to be free from collusion, said Judge shall thereupon make an order directing payment for such compensation from the State Industrial Accident Fund in accordance with the facts by him ascertained and the terms of this law. If there be a dispute, as to the right of said injured employee or his dependent family to receive compensation, or as to the amount thereof, then it shall be the duty of said Judge to set the case down for a hearing at the earliest possible date and to direct notice of such hearing to be issued by the Clerk of said Court for service upon the employer and the employee at least seven (7) days before the date fixed for said hearing, which said notice shall be served by the sheriff of said County without expense to either party, except that his actual traveling expenses shall be allowed and taxed, as costs. The hearing shall be conducted upon the statement and report filed by the employer and such formal claims as may be presented and filed with the Clerk of the District Court by or on behalf of the injured workman. If the employer in his report of the injury alleges that the injury was due solely to the culpable negligence of the injured employee, or that the claim for compensation is one not coming within the provisions of this law, then a jury may be demanded by either party and the cause shall be tried, as a Court proceeding. If a jury is demanded, it may be selected from names drawn from the five mile limit jury box, as in civil cases at any time in term time or vacation unless a regular jury panel be in attendance at Court on the date any such hearing may occur. The taking of evidence shall be summary giving a full opportunity to all parties to develop the facts fully. The official court reporter of the district shall attend the hearing and make a stenographic report of the evidence without cost to either party. The Court or Judge shall direct the County and Prosecuting Attorney, or other competent attorney appointed by the Court to conduct the examination of witnesses on behalf of the injured workman, and it shall be the duty of said attorney to appear and perform such service without expense to either party. The employer may appear in person or by counsel and introduce evidence at the same hearing. No costs shall be taxed by the clerk except fees for witnesses, who may be subpoenaed and who shall be allowed the same fees for attendance and mileage, as is fixed by law in civil actions, and jury costs shall also be taxed to and paid from the accident fund, if the verdict and judgment be in favor of the employer, but if against the employer then he shall pay the costs. At the conclusion of the hearing, the Court shall enter an order pursuant to the verdict of the jury, if a jury be called, and if no jury be called, the Court or Judge shall render a decision upon the facts and law of the case pursuant to the provisions of this Act, and make an order allowing or disallowing compensation, as the law and the evidence may warrant. In any proceeding before a Court or Judge, as aforesaid the Court or Judge shall have authority to appoint a duly qualified impartial physician to examine the injured employee and give testimony. The fee for such service shall be Five (\$5.00) Dollars, unless otherwise ordered by the Court, with

mileage allowance, as is allowed to other witnesses, which shall be taxed, as costs, and paid as other witness fees are paid. The employer or employee may at his own expense also appoint a qualified physician, who may attend and be present at any such examination of an injured employee and give testimony at such hearing or investigation.

§ 13. Appeal to supreme court.—Any order given and made in any investigation or hearing by a Court or Judge pursuant to the provisions of this Act shall be reviewable by the State Supreme Court on proceedings in error in the manner prescribed by the code of civil procedure; provided, however, that the petition in error, bill of exceptions and record on appeal must be filed in the Supreme Court within thirty (30) days from the date of decision or order on motion for new trial by a Court or a Judge; unless the time be extended by order of Court or Judge, and thirty (30) days shall be allowed all parties thereafter for filing briefs and said appeal shall be advanced on the calendar and disposed of as promptly as possible. In case an appeal to the Supreme Court is prosecuted on behalf of the injured workman, the County and Prosecuting Attorney, or other Attorney representing said workman shall order a transcript of the record of the hearing and proceeding to be prepared by the official court reporter of the district wherein said injury occurred and duly certified without cost to said injured workman, and said County and Prosecuting Attorney or other Attorney shall order the papers on file in the office of the District Court to be by said Clerk prepared, transcribed, certified and forwarded to the Clerk of the Supreme Court without cost to the injured workman, and the proceedings in the Supreme Court shall be conducted on behalf of the injured workman by the Attorney General of the State as a part of his official duties, and by other attorney representing said workman. In case an appeal be prosecuted on behalf of the employer, the record of the proceedings at the original hearing shall be supplied without cost to such employer, but such employer may employ counsel to conduct such appeal on his behalf.

§ 14. Court order recorded—Copies to auditor and treasurer.—Every order given and made by a District Court or Judge awarding payment from the Industrial Accident Fund to an injured employee or his dependent family, shall be entered of record by the Clerk of the Court where given and true copies thereof shall be immediately made and certified by said Clerk and forwarded to the State Auditor and State Treasurer, respectively, of Wyoming, and shall be by each of said officers entered upon a record to be known as the Compensation Docket and shall be the authority and direction of the State Auditor to issue warrants for compensation awards against the Industrial Accident Fund and for the State Treasurer to pay such compensation awards from said fund.

§ 15. Industrial Accident Fund—Appropriation.—There is hereby created a fund to be known as the "Industrial Accident Fund," which shall be held by the State Treasurer and by him deposited in such banks as are authorized to receive deposits of funds of the State. All moneys received by the State Treasurer under the provisions of this Act shall become a part of the Industrial Accident Fund and there is hereby appropriated out of funds in the State Treasury not otherwise appropriated the sum of Thirty Thousand Dollars (\$30,000.00), which shall be paid into and become a part of such fund. There is also appropriated annually, until otherwise provided by law, out of

any moneys in the State Treasury not otherwise appropriated a sum equal to one-fourth of the total sum, which shall be received by the State Treasurer from employers under the provisions of Section 16 hereof not, however, to exceed the sum of Forty Thousand Dollars (\$40,000.00), per annum, and the moneys so appropriated shall be credited to and become a part of such fund. All fees or mileage, of witnesses, jurors and physicians adjudged to be paid from the accident fund in any court proceeding under this Act, and all contingent expenses incurred in preparing for and in the administration of this Act shall be paid from the Industrial Accident Fund on proper vouchers and warrants.

§ 16. Employers' assessment.—Every employer engaged in any of the occupations herein defined, as extra-hazardous, is hereby required to pay into the State Treasury for the benefit of the Industrial Accident Fund a sum of money equal to two per cent (2%) of the moneys earned by each of his employees engaged in such extra-hazardous employment during each calendar month of such employment from and after April 1st, 1915. Such payment shall be so made on or before the 15th day of the month following the month for which such payments are computed and paid. The State Treasurer shall keep a separate account for each employer so contributing to said fund. Each employer shall continue to make monthly contributions as above provided, unless the sum theretofore contributed by him, after deducting all payments made on account of injuries to his employees and all allowances made on account of such injuries, shall equal full two per cent (2%) of his annual pay-roll computed by multiplying his current month's pay-roll of workmen engaged in extra-hazardous employment by twelve, and shall likewise be not less than Five Thousand (\$5,000.00) Dollars. Such employer shall not be compelled to contribute when his contributions in the fund, after making deductions as aforesaid, shall equal two per cent (2%) of his annual pay-roll, and shall likewise be not less than Five Thousand (\$5,000.00) Dollars.

§ 17. Copy of pay-roll to state treasurer.—It shall be the duty of each employer to forward to the State Treasurer on a blank form provided by said State Treasurer, a true copy of his pay-roll of persons in his employ engaged in extra-hazardous employment during the current calendar month, on the tenth day of the next succeeding calendar month, sworn to either by himself or the person having knowledge of said pay-roll and any statement contained in such verified copy, which can be shown to have been made falsely and with a wilful intention to evade the provisions of this Act shall constitute a misdemeanor punishable by a fine of not more than Five Hundred (\$500.00) Dollars.

§ 18. Duty of county assessor, state treasurer and attorney general.—It shall be the duty of the County Assessors in each of the counties of the State to make a list of all employers within their respective counties, who are engaged in extra-hazardous industries, as defined by this Act, and to forward such list of extra-hazardous employments and industries to the State Treasurer within thirty (30) days after the passage and approval of this Act. It shall be the duty of County Assessors of each of the counties of the State to make monthly reports to the State Treasurer, showing what, if any extra-hazardous industries have suspended business permanently, and what if any new extra-hazardous industries have been established and commenced in their respective counties during the preceding month, and it shall be the duty of

the State Treasurer to immediately proceed in the collection of assessments from said extra-hazardous industries, as is provided in Section 16 of this Act, and in case any employer engaged in an extra-hazardous business or industry, as defined by this Act, shall fail or refuse to pay the assessment upon his current monthly pay-roll, as is required by this Act, then it shall be the duty of the Attorney General of the State to immediately bring suit in the name of the State for the benefit of the Industrial Accident Fund against such employer for the collection of such assessment, and if a judgment for the recovery of said assessment be given in favor of the State for the use and benefit of the Industrial Accident Fund, said judgment shall be for double the amount of the pay-roll assessment provided by Section 16 hereof, together with costs.

§ 19. **Compensation schedule.**—Each employee, who shall be injured in any of the extra-hazardous employments, as herein defined, or the dependent family of any such injured workman, who may die as a result of such injuries, except in case of injuries due solely to the culpable negligence of such injured employee, shall receive out of the Industrial Accident Fund, compensation in accordance with the following schedule, and such payment shall be in lieu of and take the place of any and all rights of action against any employer contributing, as required by this Act to the Industrials Accident Fund in favor of any person or persons by reason of any such injuries or death:

(a) "Permanent, partial disability" means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments are severed, or any other injury known in surgery to be permanent, partial disability. For any permanent, partial disability resulting from any injury, the workman shall receive a lump sum as hereinafter specified.

For the loss of a thumb.....	\$ 150.00
" " " " first finger.....	125.00
" " " " second finger.....	100.00
" " " " third finger.....	100.00
" " " " fourth finger.....	75.00
" " " " palm (metacarpal bone).....	400.00
" " " " hand	800.00
" " " " an arm at or below elbow.....	900.00
" " " " above elbow.....	1000.00

For Anky-losis (total stiffness of) or contractures (due to scars or injuries) which makes the fingers more than useless, the same amounts apply to such finger or fingers (not thumb) as given above.

The loss of the second or distal phalange of the thumb shall be considered to be equal to the loss of one-half of such thumb; the loss of more than one-half of such thumb shall be considered to be equal to the loss of the whole thumb.

The loss of the third or distal phalange of any finger shall be considered to be equal to the loss of two-thirds of such finger.

The loss of more than the middle and distal phalanges of any finger shall be considered to be equal to the loss of the whole finger; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of a great toe.....	\$100.00
" " " " one of the toes other than great toe.....	50.00

The loss of more than two-thirds of any toe shall be considered to be equal to the loss of the whole toe.

The loss of less than two-thirds of any toe shall be considered equal to the loss of one-half of the toe.

For the loss of a foot.....	\$ 800.00
For the loss of a leg below the knee.....	900.00
For the loss of a leg above the knee.....	1000.00
For the loss of an eye.....	700.00

For any other injury known to surgery to be permanent partial disability, the workman shall receive a lump sum in an amount proportioned to the extent of such permanent partial disability based as near as may be upon the foregoing schedule.

(b) "Permanent total disability" means the loss of both legs, or both arms, or one leg and one arm; total loss of eye-sight, paralysis or other condition permanently incapacitating the workman from performing any work at any gainful occupation. Where there has been a previous disability, as the loss of one eye, one hand, one foot, or any other previous permanent disability, the percentage of disability for a subsequent injury shall be determined by deducting therefrom the percentage of the previous disability, as it existed at the time of the subsequent injury. When permanent total disability results from the injury, the workman shall receive:

(1) If unmarried at the time of injury a lump sum of \$1000.00.

(2) If the workman had a wife or invalid husband, but no child under the age of sixteen (16) years, a lump sum of \$1,200.00.

(3) If the workman had a wife or husband and a child or children under the age of sixteen (16) years of age, or being a widow or widower, for any such child or children the lump sum provided in the preceding paragraph shall be increased by adding thereto a sum equal to Sixty (\$60.00) Dollars, per year for each child for each year until each child shall be of the age of sixteen (16) years, but the total amount of such increased sum allowed for children under sixteen (16) years of age shall not exceed in the aggregate a sum equal to one and one-half the sum allowed to the widow or widower in any such case.

(c) "Temporary total disability" means an injury which temporarily incapacitates the injured person from performing any work at any gainful occupation for the time, but from which injury such person may recover by medical or surgical treatment and be able to resume work. In such cases, if the workman be unmarried at the time of the injury, he shall receive the sum of Fifteen (\$15.00) Dollars per month, so long as the total disability shall continue. If he have a wife with whom he is living at the time of the injury, he shall receive Twenty (\$20.00) Dollars per month, and if have children under sixteen (16) years of age, he shall receive Five (\$5.00) Dollars per month for each child under sixteen (16) years of age, but the total monthly payment shall not exceed Thirty-five (\$35.00) Dollars per month. No compensation shall be allowed for the first ten days of disability, but if the incapacity extends beyond the period of ten days, compensation shall begin on the eleventh day after such injury. As soon as recovery is so complete that the earning power of the workman at any kind of work is restored, the payments shall cease; but in no case shall the total payments made in such cases exceed in the aggregate the lump sum amount herein specified to be paid an injured workman for injuries causing permanent total disability.

(d) Where death results from an injury, the expense of burial shall be paid not to exceed Fifty (\$50.00) Dollars in any case; unless other arrangements exist between employer and employee, under agreement.

(1) But if the workman leaves a widow or invalid widower, such surviving spouse shall receive a lump sum payment of \$1,000.00 to which shall be added a lump sum aggregating the present worth of Sixty (\$60.00) Dollars per year for each surviving child under sixteen (16) years of age until the time when each of said surviving children shall become sixteen (16) years of age, provided that the aggregate sum so added on account of children under sixteen (16) years of age shall in no case exceed an amount equal to the lump sum provided to be paid the surviving spouse, and provided further that if it be shown that the surviving spouse wilfully deserted deceased without fault upon the part of the deceased, such surviving spouse shall not be regarded as a dependent in any degree, but in such cases the right of children under sixteen (16) years of age to compensation shall not be defeated, but the aggregate sum allowed them shall not exceed in any case the amount, which would have been payable to the surviving spouse if there had been no desertion of the deceased. In all cases where an order of compensation is made on account of children under sixteen (16) years of age or to persons incompetent, said fund shall be disbursed under a proper guardianship to be created by the Court or Judge making such an order.

(2) If the injured workman die during a period of temporary total disability and after receiving compensation therefor, as herein provided, and his death be shown to have resulted from such injuries, the total amount of payments received by him during such disability and prior to his death will be deducted from the lump sum amount herein provided to be paid to the surviving widow and children under sixteen (16) years of age in case of death resulting from injuries.

(3) If the workman leaves no widow, widower or child under the age of sixteen (16) years, but leaves a parent or parents surviving, who were actually dependent upon him for support, such surviving parent or parents shall receive a lump sum which shall be computed at the rate of fifty per cent (50%) of the average monthly support actually received by such parent or parents from the workman during the twelve months next preceding the occurrence of the injury calculated as near as may be over the probable period such support would have continued, but in no case exceeding the sum of Five Hundred (\$500.00) Dollars.

§ 20. Forfeiture by injured employé—Payments withheld.—If any injured employee shall persist in unsanitary or injurious practice, which tends to imperil or retard his recovery, or if he shall refuse to submit to such medical or surgical treatment, as is reasonably essential to promote his recovery, he shall forfeit all right to compensation under this act; and where an injured employee is under care and treatment of a physician, he shall not be permitted to personally receive or use any compensation payments allowed him under this act, except upon the order of such physician, but such payments shall be withheld and delivered to such injured workman upon his recovery or discharge by such physician.

§ 21. Exemption from execution or attachment.—No money paid or payable under this act out of the Industrial Accident Fund shall, prior to issuance and delivery of the warrant therefor be capable of being assigned,

charged or ever be taken in execution or attached or garnished, or shall the same pass to any other person by operation of law, any such assignment or charge shall be void.

§ 22. Minor workman.—A minor working at an age legally permitted under the laws of this State shall be deemed *sui juris* for the purpose of this act and no other person shall have any cause of action or right to compensation for injury to such minor workman, except as expressly provided in this act, but in the event of a lump sum payment becoming due under this act to such minor workman, the management of same shall be within the probate jurisdiction of the Courts, the same as any other properties of minors.

§ 23. Extra-hazardous public work—Contract work.—Whenever the State, County or any municipal corporation shall engage in any extra-hazardous work in which workmen are employed for wages, this act shall be applicable thereto. The employer's payments into the Industrial Accident Fund shall be made from the Treasury of the State, County or Municipality. If said work is being done by contract, the pay-roll of the contractor and the sub-contractor shall be the basis of computation and in the case of contract work consuming less than one year in performance the required payment into the accident fund shall be subject to the provisions of this act and the State for its general fund, the county or municipal corporation shall be entitled to collect from the contractor the full amount payable to the Industrial Accident Fund and the contractor, in turn, shall be entitled to collect from the sub-contractor his proportionate amount of payment; the provisions of this section shall apply to all extra-hazardous work done by contract, except that in private work the contractor shall be responsible, primarily and directly, to the Industrial Accident Fund for the proper percentage of the total pay-roll of the work and for the amounts due it, and the owner of the property affected by the contract shall be surety for such payments. Whenever and so long as the State law, city charter or municipal ordinance, provision is made for municipal employees injured in the course of employment, such employee shall not be entitled to the benefits of this act and shall not be included in the pay-roll of the municipality under this act.

§ 24. Safety devices.—Nothing in this act contained shall repeal any existing law providing for the installation or maintenance of any device, means or method for the prevention of accidents in extra-hazardous work or for a penalty or punishment for failure to install or maintain any such protective device, means or method.

§ 25. Fees for services in procuring compensation limited.—It shall be unlawful for any person or any number of persons acting together or separately or in any way including attorneys, agents, interpreters, and all other persons, to receive or agree to receive either directly or indirectly from any beneficiary or beneficiaries under this act for services rendered or to be rendered, either jointly or separately, in relating to procuring any benefit or benefits under this act, any sum or sums aggregating more than fifty dollars or more than five per centum of the whole amount received or to be received by such beneficiary or beneficiaries on account of injuries to any employee. Every person violating or concerned in the violation of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars nor more than five hundred dollars, to which may be added imprisonment in the county jail for a term not exceeding ninety days.

§ 26. **Physicians required to testify.**—Any physician having attended an employee in a professional capacity may be required to testify before any Court or Judge when so directed in cases, coming within the provisions of this act, and the law of privileged communication between physician and patient, as fixed by statute shall not apply in such cases.

§ 27. **False statement by employé.**—Any employee or workman who shall make or cause to be made on his behalf any misrepresentation or false statement for the purpose of receiving compensation under this act to which he is not lawfully entitled shall be guilty of a misdemeanor, and shall on conviction, be fined not more than Three Hundred (\$300.00) Dollars or imprisoned for not more than ninety (90) days.

§ 28. **Statistics compiled by state treasurer.**—It shall be the duty of the State Treasurer to secure and compile statistical information concerning accidents occurring in the extra-hazardous employment defined by this act, showing the number of accidents or fatalities occurring in each of said employments, the amount paid in by each employer coming within the provisions of this act; the amount paid out on account of injuries, or death resulting from injuries in such employments and any other information relating to the operation or administration of this law that may be of interest and to make a full report thereof, together with such recommendations as he may deem proper for changes or amendments herein, and to publish a full report thereof, to the legislature on or before each succeeding session following the passage and approval of this act.

§ 29. **State examiner may examine employer's books.**—The State Treasurer may direct the State Examiner to examine the books, accounts or pay-rolls of any employer at any time for the purpose of securing any information desired in the administration of this act, and it shall be the duty of the State Examiner to perform such service when called upon by the State Treasurer.

§ 30. **Disabled workman examined by employer's physician—Recovery reported to court.**—Any workman awarded compensation for temporary total disability under this act, as defined by clause (c) of Section 19 hereof shall, if thereafter requested by his employer, submit himself for medical examination by a physician licensed to practice medicine in this State, at a place designated by the employer and which shall be reasonably convenient for the workman, and said workman may have a licensed physician present of his own selection. The purpose of such examination shall be to determine whether the workman has recovered so that his earning power at any kind of work is restored. If it be agreed that the workman has recovered so that his earning power at any kind of work is restored, the fact shall be reported by the employer and said physician to the judge of the District Court who made the award in the first instance, or if there be a dispute, as to the recovery of the workman and his restoration to earning power, it shall be likewise reported to said Judge by filing a statement in either case in the office of the Clerk of the District Court of the County where the award was made and the matter shall be disposed of in such manner as said Judge may deem proper under the facts. If said Judge find that said workman has recovered and has been restored to his earning power and that compensation should be discontinued, his decision and judgment in the premises shall be certified to the State Auditor and State Treasurer and shall be authority and direction to said officers

to discontinue compensation payments. If the workman in such case refuse to submit to such examination or obstructs the same, his right to monthly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period or refusal.

§ 31. Employee's statement of dependent persons.—All employees or workmen coming within the provisions of this act shall be required upon entering service in any of the extra-hazardous employments herein defined to make and sign a written statement setting forth the names of the persons dependent upon them for support or constituting members of their dependent families, in each case giving the names and ages of their children under the age of sixteen (16) years.

§ 32. Payments of employers not to be refunded.—All payments made into the Accident Fund by any and every employer under the provisions of this act shall be taken as paid and received in consideration of the indemnity to such employer by reason of his contributing to the Industrial Accident Fund and in consideration of the payments made by the State to such fund, and no part of any moneys so paid in by any employer shall ever be refunded to him either during the time when he continues in business as such employer, or after he ceases such business. Provided, however, if this act shall be hereafter repealed or held invalid, all moneys which are in the Industrial Fund at the time of the repeal or final holding of invalidity shall be subject to such disposition as may be provided by the Legislature and in default of such legislative provision, distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

§ 33. Existing contracts and pending actions not affected.—This Act shall not affect any contract entered into and existing before its passage or any action pending or cause of action existing prior to April 1st, 1915.

§ 34. When effective.—This Act shall take effect and be in force from and after the 1st day of April, 1915.

Approved February 27, 1915.

UNITED STATES (FEDERAL ACTS)

ACT OF 1908 AND AMENDMENTS

Section

(35 Stat. 556.)

1. Application of Act—Proviso.
2. Death benefits.
3. Report of superior officer.
4. Affidavit and certificate—Allowance and payment of claim.
5. Medical examination.
6. Payments—Exemption.
7. Contracting out.
8. Repeal.

Section

(36 Stat. 1363.)

5. Employés of Isthmian Canal Commission.

(37 Stat. 74.)

Hazardous work under Bureau of Mines and Forestry Service.

(37 Stat. 238, 239.)

Hazardous employment in light-house service.

ACT OF 1916

1. When compensation is payable.
2. Three-day period.
3. Total disability.
4. Partial disability.
5. Same—Other work.
6. Amount of disability compensation.
7. Other remuneration.
8. Commencement of compensation—Annual or sick leave.
9. Medical, surgical, and hospital treatment.
10. Death benefits and dependents.
11. Burial expenses.
12. Computation of earnings.
13. Computation of earning capacity.
14. Lump sum.
15. Notice of injury.
16. Same.
17. Same.
18. Claim.
19. Same.
20. Same.
21. Medical examination.
22. Same.
23. Same.
24. Report to Commission.

25. Assignment—Exemption.
26. Injury caused by third person—Assignment of claim—Deposit of sum recovered by the United States.
27. Same—Deposit of sum recovered from beneficiary.
28. Commission.
- 28a. Same—Transfer of claims—Reports—Employés.
29. Same—Evidence.
30. Same—Employés.
31. Same—Annual estimates.
32. Same—Rules and regulations.
33. Same—Report to congress.
34. Appropriation for expenses.
35. Compensation fund.
36. Finding, award, and payment.
37. Review.
38. Cancellation of award—Recovery of payment.
39. False statements—Perjury.
40. Terms defined.
41. Repealing clause — Provisos — Panama Railroad Company—Releases.
42. Employés of Panama Canal and Panama Railroad Company.

ACT OF 1908 AS AMENDED

The Act of 1908 is continued in force only as to injuries prior to the Act of 1916. The Act of March 4, 1913, establishing the Department of Labor, transferred the administration of the Compensation Act from the Department of Commerce and Labor to the Department of Labor. The printing of the words [Commerce and] in brackets indicates that the words "Commerce and" are eliminated and the administrative authority is in the Secretary of Labor.

An act granting to certain employees of the United States the right to receive from it compensation for injuries sustained in the course of their employment.

(35 Stat. 556.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

§ 1. Application of Act—Proviso.—That when, on or after August first, nineteen hundred and eight, any person employed by the United States as an artisan or laborer in any of its manufacturing establishments, arsenals, or navy yards, or in the construction of river and harbor or fortification work or in hazardous employment on construction work in the reclamation of arid lands or the management and control of the same, or in hazardous employment under the Isthmian Canal Commission, is injured in the course of such employment, such employee shall be entitled to receive for one year thereafter, unless such employee, in the opinion of the Secretary of [Commerce and] Labor, be sooner able to resume work, the same pay as if he continued to be employed, such payment to be made under such regulations as the Secretary of [Commerce and] Labor may prescribe: Provided, That no compensation shall be paid under this act where the injury is due to the negligence or misconduct of the employee injured, nor unless said injury shall continue for more than fifteen days. All questions of negligence or misconduct shall be determined by the Secretary of [Commerce and] Labor.

§ 2. Death benefits.—That if any artisan or laborer so employed shall die during the said year by reason of such injury received in the course of such employment, leaving a widow, or a child or children under sixteen years of age, or a dependent parent, such widow and child or children and dependent parent shall be entitled to receive, in such portions and under such regulations as the Secretary of [Commerce and] Labor may prescribe, the same amount, for the remainder of the said year, that said artisan or laborer would be entitled to receive as pay if such employee were alive and continued to be employed: Provided, That if the widow shall die at any time during the said year her portion of said amount shall be added to the amount to be paid to the remaining beneficiaries under the provisions of this section, if there be any.

§ 3. Report of superior officer.—That whenever an accident occurs to any employee embraced within the terms of the first section of this act, and which results in death or a probable incapacity for work, it shall be the duty of the official superior of such employee to at once report such accident and the injury resulting therefrom to the head of his bureau or independent office, and his report shall be immediately communicated through regular official channels to the Secretary of [Commerce and] Labor. Such report shall state, first, the time, cause, and nature of the accident and injury and the probable duration of the injury resulting therefrom; second, whether the accident arose out of or in the course of the injured person's employment; third, whether the accident was due to negligence or misconduct on the part of the employee injured; fourth, any other matters required by such rules and regulations as the Secretary of [Commerce and] Labor may prescribe. The head of each department or independent office shall have power, however, to charge a special official with the duty of making such reports.

§ 4. **Affidavit and certificate—Allowance and payment of claim.**—That in the case of any accident which shall result in death, the persons entitled to compensation under this act or their legal representatives shall, within ninety days after such death, file with the Secretary of [Commerce and] Labor an affidavit setting forth their relationship to the deceased and the ground of their claim for compensation under the provisions of this act. This shall be accompanied by the certificate of the attending physician setting forth the fact and cause of death, or the nonproduction of the certificate shall be satisfactorily accounted for. In the case of incapacity for work lasting more than 15 days, the injured party desiring to take the benefit of this act shall, within a reasonable period after the expiration of such time, file with his official superior, to be forwarded through regular official channels to the Secretary of [Commerce and] Labor, an affidavit setting forth the grounds of his claim for compensation, to be accompanied by a certificate of the attending physician as to the cause and nature of the injury and probable duration of the incapacity, or the nonproduction of the certificate shall be satisfactorily accounted for. If the Secretary of [Commerce and] Labor shall find from the report and affidavit or other evidence produced by the claimant or his or her legal representatives, or from such additional investigation as the Secretary of [Commerce and] Labor may direct, that a claim for compensation is established under this act, the compensation to be paid shall be determined as provided under this act and approved for payment by the Secretary of [Commerce and] Labor.

§ 5. **Medical examination.**—That the employee shall, whenever and as often as required by the Secretary of [Commerce and] Labor, at least once in six months, submit to medical examination, to be provided and paid for under the direction of the Secretary, and if such employee refuses to submit to or obstructs such examination his or her right to compensation shall be lost for the period covered by the continuance of such refusal or obstruction.

§ 6. **Payments—Exemption.**—That payments under this act are only to be made to the beneficiaries or their legal representatives other than assignees, and shall not be subject to the claims of creditors.

§ 7. **Contracting out.**—That the United States shall not exempt itself from liability under this act by any contract, agreement, rule, or regulation, and any such contract, agreement, rule, or regulation shall be pro tanto void.

§ 8. **Repeal.**—That all acts or parts of acts in conflict herewith or providing a different scale of compensation or otherwise regulating its payment are hereby repealed.

Approved May 30, 1908.

An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and twelve, and for other purposes.

(36 Stat. 1363.)

* * * * *
§ 5. **Employees of Isthmian Canal Commission.**—Hereafter the act granting to certain employees of the United States the right to receive from it compensation for injuries sustained in the course of their employment shall apply to all employees under the Isthmian Canal Commission, when injured in the course of their employment; and claims for compensation on account

of injury or death resulting from an accident occurring hereafter shall be settled by the chairman of the Isthmian Canal Commission, who shall, as to such claims and under such regulations as he may prescribe, perform all the duties now devolving upon the Secretary of [Commerce and] Labor: Provided, That when an injury results in death claim for compensation on account thereof shall be filed within one year after such death.

Approved March 4, 1911.

An act to amend an act entitled "An act granting to certain employees of the United States the right to receive from it compensation for injuries sustained in the course of their employment," approved May thirtieth, nineteen hundred and eight.

(37 Stat. 74.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Hazardous work under Bureau of Mines and Forestry Service.—That the provisions of the act approved May thirtieth, nineteen hundred and eight, entitled "An act granting to certain employees of the United States the right to receive from it compensation for injuries sustained in the course of their employment," shall, in addition to the classes of persons therein designated, be held to apply to any artisan, laborer, or other employee engaged in any hazardous work under the Bureau of Mines or the forestry service of the United States: Provided, That this act shall not be held to embrace any case arising prior to its passage.

Approved March 11, 1912.

An Act to authorize additional aids to navigation in the Lighthouse Service, and for other purposes.

(37 Stat. 238, 239.)

* * * * *

Hazardous employment in light-house service.—Hereafter the benefits of the act of May thirtieth, nineteen hundred and eight (Thirty-fifth Statutes, page five hundred and fifty-six), entitled "An act granting to certain employees of the United States the right to receive from it compensation for injuries sustained in the course of their employment," shall be extended to persons employed by the United States in any hazardous employment in the Lighthouse Service. * * *

Approved July 27, 1912.

ACT OF 1916

An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

§ 1. When compensation is payable.—That the United States shall pay compensation as hereinafter specified for the disability or death of an employee resulting from a personal injury sustained while in the performance of his duty, but no compensation shall be paid if the injury or death is caused by the willful misconduct of the employee or by the employee's intention to bring about the injury or death of himself or of another, or if intoxication of the injured employee is the proximate cause of the injury or death.

§ 2. **Three-day period.**—That during the first three days of disability the employee shall not be entitled to compensation except as provided in section nine. No compensation shall at any time be paid for such period.

§ 3. **Total disability.**—That if the disability is total the United States shall pay to the disabled employee during such disability a monthly compensation equal to sixty-six and two-thirds per centum of his monthly pay, except as hereinafter provided.

§ 4. **Partial disability.**—That if the disability is partial the United States shall pay to the disabled employee during such disability a monthly compensation equal to sixty-six and two-thirds per centum of the difference between his monthly pay and his monthly wage-earning capacity after the beginning of such partial disability. The commission may, from time to time, require a partially disabled employee to make an affidavit as to the wages which he is then receiving. In such affidavit the employee shall include a statement of the value of housing, board, lodging, and other advantages which are received from the employer as a part of his remuneration and which can be estimated in money. If the employee, when required, fails to make such affidavit, he shall not be entitled to any compensation while such failure continues, and the period of such failure shall be deducted from the period during which compensation is payable to him.

§ 5. **Same—Other work.**—That if a partially disabled employee refuses to seek suitable work or refuses or neglects to work after suitable work is offered to, procured by, or secured for him, he shall not be entitled to any compensation.

§ 6. **Amount of disability compensation.**—That the monthly compensation for total disability shall not be more than \$66.67 nor less than \$33.33, unless the employee's monthly pay is less than \$33.33, in which case his monthly compensation shall be the full amount of his monthly pay. The monthly compensation for partial disability shall not be more than \$66.67. In the case of persons who at the time of the injury were minors or employed in a learner's capacity and who were not physically or mentally defective, the commission shall, on any review after the time when the monthly wage-earning capacity of such persons would probably, but for the injury, have increased, award compensation based on such probable monthly wage-earning capacity. The commission may, on any review after the time when the monthly wage-earning capacity of the disabled employee would probably, irrespective of the injury, have decreased on account of old age, award compensation based on such probable monthly wage-earning capacity.

§ 7. **Other remuneration.**—That as long as the employee is in receipt of compensation under this Act, or, if he has been paid a lump sum in commutation of installment payments, until the expiration of the period during which such installment payments would have continued, he shall not receive from the United States any salary, pay, or remuneration whatsoever except in return for services actually performed, and except pensions for service in the Army or Navy of the United States.

§ 8. **Commencement of compensation—Annual or sick leave.**—That if at the time the disability begins the employee has annual or sick leave to his credit he may, subject to the approval of the head of the department, use such leave until it is exhausted, in which case his compensation shall begin on the fourth day of disability after the annual or sick leave has ceased.

§ 9. Medical, surgical, and hospital treatment.—That immediately after an injury sustained by an employee while in the performance of his duty, whether or not disability has arisen, and for a reasonable time thereafter, the United States shall furnish to such employee reasonable medical, surgical, and hospital services and supplies unless he refuses to accept them. Such services and supplies shall be furnished by United States medical officers and hospitals, but where this is not practicable shall be furnished by private physicians and hospitals designated or approved by the commission and paid for from the employees' compensation fund. If necessary for the securing of proper medical, surgical, and hospital treatment, the employee, in the discretion of the commission, may be furnished transportation at the expense of the employees' compensation fund.

§ 10. Death benefits and dependents.—That if death results from the injury within six years the United States shall pay to the following persons for the following periods a monthly compensation equal to the following percentages of the deceased employee's monthly pay, subject to the modification that no compensation shall be paid where the death takes place more than one year after the cessation of disability resulting from such injury, or, if there has been no disability preceding death, more than one year after the injury:

(A) To the widow, if there is no child, thirty-five per centum. This compensation shall be paid until her death or marriage.

(B) To the widower, if there is no child, thirty-five per centum if wholly dependent for support upon the deceased employee at the time of her death. This compensation shall be paid until his death or marriage.

(C) To the widow or widower, if there is a child, the compensation payable under clause (A) or clause (B) and in addition thereto ten per centum for each child, not to exceed a total of sixty-six and two-thirds per centum for such widow or widower and children. If a child has a guardian other than the surviving widow or widower, the compensation payable on account of such child shall be paid to such guardian. The compensation payable on account of any child shall cease when he dies, marries, or reaches the age of eighteen, or, if over eighteen, and incapable of self-support, becomes capable of self-support.

(D) To the children, if there is no widow or widower, twenty-five per centum for one child and ten per centum additional for each additional child, not to exceed a total of sixty-six and two-thirds per centum, divided among such children share and share alike. The compensation of each child shall be paid until he dies, marries, or reaches the age of eighteen, or, if over eighteen and incapable of self-support, becomes capable of self-support. The compensation of a child under legal age shall be paid to its guardian.

(E) To the parents, if one is wholly dependent for support upon the deceased employee at the time of his death and the other is not dependent to any extent, twenty-five per centum; if both are wholly dependent, twenty per centum to each; if one is or both are partly dependent, a proportionate amount in the discretion of the commission.

The above percentages shall be paid if there is no widow, widower, or child. If there is a widow, widower, or child, there shall be paid so much of the above percentages as, when added to the total percentages payable to the widow, widower, and children, will not exceed a total of sixty-six and two-thirds per centum.

(F) To the brothers, sisters, grandparents, and grandchildren, if one is wholly dependent upon the deceased employee for support at the time of his death, twenty per centum to such dependent; if more than one are wholly dependent, thirty per centum, divided among such dependents share and share alike; if there is no one of them wholly dependent, but one or more partly dependent, ten per centum divided among such dependents share and share alike.

The above percentages shall be paid if there is no widow, widower, child, or dependent parent. If there is a widow, widower, child, or dependent parent, there shall be paid so much of the above percentages as when added to the total percentage payable to the widow, widower, children, and dependent parents, will not exceed a total of sixty-six and two-thirds per centum.

(G) The compensation of each beneficiary under clauses (E) and (F) shall be paid for a period of eight years from the time of the death, unless before that time he, if a parent or grandparent, dies, marries, or ceases to be dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen, or, if over eighteen and incapable of self-support, becomes capable of self-support. The compensation of a brother, sister, or grandchild under legal age shall be paid to his or her guardian.

(H) As used in this section, the term "child" includes stepchildren, adopted children, and posthumous children, but does not include married children. The terms "brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but do not include married brothers or married sisters. All of the above terms and the term "grandchild" include only persons who at the time of the death of the deceased employee are under eighteen years of age or over that age and incapable of self-support. The term "parent" includes stepparents and parents by adoption. The term "widow" includes only the decedent's wife living with or dependent for support upon him at the time of his death. The term "widower" includes only the decedent's husband dependent for support upon her at the time of her death. The terms "adopted" and "adoption" as used in this clause include only legal adoption prior to the time of the injury.

(I) Upon the cessation of compensation under this section to or on account of any person, the compensation of the remaining persons entitled to compensation for the unexpired part of the period during which their compensation is payable shall be that which such persons would have received if they had been the only persons entitled to compensation at the time of the decedent's death.

(J) In case there are two or more classes of persons entitled to compensation under this section and the apportionment of such compensation, above provided, would result in injustice, the commission may, in its discretion, modify the apportionment to meet the requirements of the case.

(K) In computing compensation under this section, the monthly pay shall be considered not to be more than \$100 nor less than \$50, but the total monthly compensation shall not exceed the monthly pay computed as provided in section twelve.

(L) If any person entitled to compensation under this section, whose compensation by the terms of this section ceases upon his marriage, accepts any payments of compensation after his marriage he shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than one year, or by both such fine and imprisonment.

§ 11. **Burial expenses.**—That if death results from the injury within six years the United States shall pay to the personal representative of the deceased employee burial expenses not to exceed \$100, in the discretion of the commission. In the case of an employee whose home is within the United States, if his death occurs away from his home office or outside of the United States, and if so desired by his relatives, the body shall, in the discretion of the commission, be embalmed and transported in a hermetically sealed casket to the home of the employee. Such burial expenses shall not be paid and such transportation shall not be furnished where the death takes place more than one year after the cessation of disability resulting from such injury, or, if there has been no disability preceding death, more than one year after the injury.

§ 12. **Computation of earnings.**—That in computing the monthly pay the usual practice of the service in which the employee was employed shall be followed. Subsistence and the value of quarters furnished an employee shall be included as part of the pay, but overtime pay shall not be taken into account.

§ 13. **Computation of earning capacity.**—That in the determination of the employee's monthly wage-earning capacity after the beginning of partial disability, the value of housing, board, lodging, and other advantages which are received from his employer as a part of his remuneration and which can be estimated in money shall be taken into account.

§ 14. **Lump sum.**—That in cases of death or of permanent total or permanent partial disability, if the monthly payment to the beneficiary is less than \$5 a month, or if the beneficiary is or is about to become a nonresident of the United States, or if the commission determines that it is for the best interests of the beneficiary, the liability of the United States for compensation to such beneficiary may be discharged by the payment of a lump sum equal to the present value of all future payments of compensation computed at four per centum true discount compounded annually. The probability of the beneficiary's death before the expiration of the period during which he is entitled to compensation shall be determined according to the American Experience Table of Mortality; but in case of compensation to the widow or widower of the deceased employee, such lump sum shall not exceed sixty months' compensation. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded.

§ 15. **Notice of injury.**—That every employee injured in the performance of his duty, or some one on his behalf, shall, within forty-eight hours after the injury, give written notice thereof to the immediate superior of the employee. Such notice shall be given by delivering it personally or by depositing it properly stamped and addressed in the mail.

§ 16. **Same.**—That the notice shall state the name and address of the employee, the year, month, day, and hour when and the particular locality where the injury occurred, and the cause and nature of the injury, and shall be signed by and contain the address of the person giving the notice.

§ 17. **Same.**—That unless notice is given within the time specified or unless the immediate superior has actual knowledge of the injury, no compensation shall be allowed, but for any reasonable cause shown, the commission may allow compensation if the notice is filed within one year after the injury.

§ 18. **Claim.**—That no compensation under this Act shall be allowed to any person, except as provided in section thirty-eight, unless he or some one

on his behalf shall, within the time specified in section twenty, make a written claim therefor. Such claim shall be made by delivering it at the office of the commission or to any commissioner or to any person whom the commission may by regulation designate, or by depositing it in the mail properly stamped and addressed to the commission or to any person whom the commission may by regulation designate.

§ 19. **Same.**—That every claim shall be made on forms to be furnished by the commission and shall contain all the information required by the commission. Each claim shall be sworn to by the person entitled to compensation or by the person acting on his behalf, and, except in case of death, shall be accompanied by a certificate of the employee's physician stating the nature of the injury and the nature and probable extent of the disability. For any reasonable cause shown the commission may waive the provisions of this section.

§ 20. **Same.**—That all original claims for compensation for disability shall be made within sixty days after the injury. All original claims for compensation for death shall be made within one year after the death. For any reasonable cause shown the commission may allow original claims for compensation for disability to be made at any time within one year.

§ 21. **Medical examination.**—That after the injury the employee shall, as frequently and at such times and places as may be reasonably required, submit himself to examination by a medical officer of the United States or by a duly qualified physician designated or approved by the commission. The employee may have a duly qualified physician designated and paid by him present to participate in such examination. For all examinations after the first the employee shall, in the discretion of the commission, be paid his reasonable traveling and other expenses and loss of wages incurred in order to submit to such examination. If the employee refuses to submit himself for or in any way obstructs any examination, his right to claim compensation under this Act shall be suspended until such refusal or obstruction ceases. No compensation shall be payable while such refusal or obstruction continues, and the period of such refusal or obstruction shall be deducted from the period for which compensation is payable to him.

§ 22. **Same.**—That in case of any disagreement between the physician making an examination on the part of the United States and the employee's physician the commission shall appoint a third physician, duly qualified, who shall make an examination.

§ 23. **Same.**—That fees for examinations made on the part of the United States under sections twenty-one and twenty-two by physicians who are not already in the service of the United States shall be fixed by the commission. Such fees, and any sum payable to the employee under section twenty-one, shall be paid out of the appropriation for the work of the commission.

§ 24. **Report to Commission.**—That immediately after an injury to an employee resulting in his death or in his probable disability, his immediate superior shall make a report to the commission containing such information as the commission may require, and shall thereafter make such supplementary reports as the commission may require.

§ 25. **Assignment—Exemption.**—That any assignment of a claim for compensation under this Act shall be void and all compensation and claims therefor shall be exempt from all claims of creditors.

§ 26. **Injury caused by third person—Assignment of claim—Deposit of sum recovered by the United States.**—If an injury or death for which

compensation is payable under this Act is caused under circumstances creating a legal liability upon some person other than the United States to pay damages therefor, the commission may require the beneficiary to assign to the United States any right of action he may have to enforce such liability of such other person or any right which he may have to share in any money or other property received in satisfaction of such liability of such other person, or the commission may require said beneficiary to prosecute said action in his own name.

If the beneficiary shall refuse to make such assignment or to prosecute said action in his own name when required by the commission, he shall not be entitled to any compensation under this Act.

The cause of action when assigned to the United States may be prosecuted or compromised by the commission, and if the commission realizes upon such cause of action, it shall apply the money or other property so received in the following manner: After deducting the amount of any compensation already paid to the beneficiary and the expenses of such realization or collection, which sum shall be placed to the credit of the employees' compensation fund, the surplus, if any, shall be paid to the beneficiary and credited upon any future payments of compensation payable to him on account of the same injury.

§ 27. Same—Deposit of sum recovered from beneficiary.—That if an injury or death for which compensation is payable under this Act is caused under circumstances creating a legal liability in some person other than the United States to pay damages therefor, and a beneficiary entitled to compensation from the United States for such injury or death receives, as a result of a suit brought by him or on his behalf, or as a result of a settlement made by him or on his behalf, any money or other property in satisfaction of the liability of such other person, such beneficiary shall, after deducting the costs of suit and a reasonable attorney's fee, apply the money or other property so received in the following manner:

(A) If his compensation has been paid in whole or in part, he shall refund to the United States the amount of compensation which has been paid by the United States and credit any surplus upon future payments of compensation payable to him on account of the same injury. Any amount so refunded to the United States shall be placed to the credit of the employees' compensation fund.

(B) If no compensation has been paid to him by the United States, he shall credit the money or other property so received upon any compensation payable to him by the United States on account of the same injury.

§ 28. Commission.—That a commission is hereby created, to be known as the United States Employees' Compensation Commission, and to be composed of three commissioners appointed by the President, by and with the advice and consent of the Senate, one of whom shall be designated by the President as chairman. No commissioner shall hold any other office or position under the United States. No more than two of said commissioners shall be members of the same political party. One of said commissioners shall be appointed for a term of two years, one for a term of four years, and one for a term of six years, and at the expiration of each of said terms, the commissioner then appointed shall be appointed for a period of six years. Each commissioner shall receive a salary of \$4,000 a year. The principal office of said

commission shall be in Washington, District of Columbia, but the said commission is authorized to perform its work at any place deemed necessary by said commission, subject to the restrictions and limitations of this Act.

§ 28a. **Same—Transfer of claims—Reports—Employés.**—Upon the organization of said commission and notification to the heads of all executive departments that the commission is ready to take up the work devolved upon it by this Act, all commissions and independent bureaus, by or in which payments for compensation are now provided, together with the adjustment and settlement of such claims, shall cease and determine, and such executive departments, commissions, and independent bureaus shall transfer all pending claims to said commission to be administered by it. The said commission may obtain, in all cases, in addition to the reports provided in section twenty-four, such information and such reports from employees of the departments as may be agreed upon by the commission and the heads of the respective departments. All clerks and employees now exclusively engaged in carrying on said work in the various executive departments, commissions, and independent bureaus, shall be transferred to, and become employees of, the commission at their present grades and salaries.

§ 29. **Same—Evidence.**—That the commission, or any commissioner by authority of the commission, shall have power to issue subpoenas for and compel the attendance of witnesses within a radius of one hundred miles, to require the production of books, papers, documents, and other evidence, to administer oaths, and to examine witnesses, upon any matter within the jurisdiction of the commission.

§ 30. **Same—Employés.**—That the commission shall have such assistants, clerks, and other employees as may be from time to time provided by Congress. They shall be appointed from lists of eligibles to be supplied by the Civil Service Commission, and in accordance with the civil-service law.

§ 31. **Same—Annual estimates.**—That the commission shall submit annually to the Secretary of the Treasury estimates of the appropriations necessary for the work of the commission.

§ 32. **Same—Rules and regulations.**—That the commission is authorized to make necessary rules and regulations for the enforcement of this Act, and shall decide all questions arising under this Act.

§ 33. **Same—Report to Congress.**—That the commission shall make to Congress at the beginning of each regular session a report of its work for the preceding fiscal year, including a detailed statement of appropriations and expenditures, a detailed statement showing receipts of and expenditures from the employees' compensation fund, and its recommendations for legislation.

§ 34. **Appropriation for expenses.**—That for the fiscal year ending June thirtieth, nineteen hundred and seventeen, there is hereby authorized to be appropriated, from any money in the Treasury not otherwise appropriated, the sum of \$50,000 for the work of the commission, including salaries of the commissioners and of such assistants, clerks, and other employees as the commission may deem necessary, and for traveling expenses, expenses of medical examinations under sections twenty-one and twenty-two, reasonable traveling and other expenses and loss of wages payable to employees under section twenty-one, rent and equipment of offices, purchase of books, stationery, and other supplies, printing and binding to be done at the Government Printing Office, and other necessary expenses.

§ 35. Compensation fund.—That there is hereby authorized to be appropriated, from any money in the Treasury not otherwise appropriated, the sum of \$500,000, to be set aside as a separate fund in the Treasury, to be known as the employees' compensation fund. To this fund there shall be added such sums as Congress may from time to time appropriate for the purpose. Such fund, including all additions that may be made to it, is hereby authorized to be permanently appropriated for the payment of the compensation provided by this Act, including the medical, surgical, and hospital services and supplies provided by section nine, and the transportation and burial expenses provided by sections nine and eleven. The commission shall submit annually to the Secretary of the Treasury estimates of the appropriations necessary for the maintenance of the fund.

§ 36. Finding, award, and payment.—The commission, upon consideration of the claim presented by the beneficiary, and the report furnished by the immediate superior and the completion of such investigation as it may deem necessary, shall determine and make a finding of facts thereon and make an award for or against payment of the compensation provided for in this Act. Compensation when awarded shall be paid from the employees' compensation fund.

§ 37. Review.—That if the original claim for compensation has been made within the time specified in section twenty, the commission may, at any time, on its own motion or on application, review the award, and, in accordance with the facts found on such review, may end, diminish, or increase the compensation previously awarded, or, if compensation has been refused or discontinued, award compensation.

§ 38. Cancellation of award—Recovery of payment.—That if any compensation is paid under a mistake of law or of fact, the commission shall immediately cancel any award under which such compensation has been paid and shall recover, as far as practicable, any amount which has been so paid. Any amount so recovered shall be placed to the credit of the employees' compensation fund.

§ 39. False statements—Perjury.—That whoever makes, in any affidavit required under section four or in any claim for compensation, any statement, knowing it to be false, shall be guilty of perjury and shall be punished by a fine of not more than \$2,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

§ 40. Terms defined.—That wherever used in this Act—

The singular includes the plural and the masculine includes the feminine.

The term "employee" includes all civil employees of the United States and of the Panama Railroad Company.

The term "commission" shall be taken to refer to the United States Employees' Compensation Commission provided for in section twenty-eight.

The term "physician" includes surgeons.

The term "monthly pay" shall be taken to refer to the monthly pay at the time of the injury.

§ 41. Repealing clause—Provisos—Panama Railroad Company—Releases.—That all Acts or parts of Acts inconsistent with this Act are hereby repealed: Provided, however, That for injuries occurring prior to the passage of this Act compensation shall be paid under the law in force at the time of the passage of this Act: And provided further, That if an injury or death

for which compensation is payable under this Act is caused under circumstances creating a legal liability in the Panama Railroad Company to pay damages therefor under the laws of any State, Territory, or possession of the United States or of the District of Columbia or of any foreign country, no compensation shall be payable until the person entitled to compensation releases to the Panama Railroad Company any right of action which he may have to enforce such liability of the Panama Railroad Company, or until he assigns to the United States any right which he may have to share in any money or other property received in satisfaction of such liability of the Panama Railroad Company.

§ 42. Employees of Panama Canal and Panama Railroad Company.—That the President may, from time to time, transfer the administration of this Act so far as employees of the Panama Canal and of the Panama Railroad Company are concerned to the governor of the Panama Canal, and so far as employees of the Alaskan Engineering Commission are concerned to the chairman of that commission, in which cases the words "commission" and "its" wherever they appear in this Act shall, so far as necessary to give effect to such transfer, be read "governor of the Panama Canal" or "chairman of the Alaskan Engineering Commission," as the case may be, and "his"; and the expenses of medical examinations under sections twenty-one and twenty-two, and the reasonable traveling and other expenses and loss of wages payable to employees under section twenty-one, shall be paid out of appropriations for the Panama Canal or for the Alaskan Engineering Commission or out of funds of the Panama Railroad, as the case may be, instead of out of the appropriation for the work of the commission.

In the case of compensation to employees of the Panama Canal or of the Panama Railroad Company for temporary disability, either total or partial, the President may authorize the governor of the Panama Canal to waive, at his discretion, the making of the claim required by section eighteen. In the case of alien employees of the Panama Canal or of the Panama Railroad Company, or of any class or classes of them, the President may remove or modify the minimum limit established by section six on the monthly compensation for disability and the minimum limit established by clause (K) of section ten on the monthly pay on which death compensation is to be computed. The President may authorize the governor of the Panama Canal and the chairman of the Alaskan Engineering Commission to pay the compensation provided by this Act, including the medical, surgical, and hospital services and supplies provided by section nine and the transportation and burial expenses provided by sections nine and eleven, out of the appropriations for the Panama Canal and for the Alaskan Engineering Commission, such appropriations to be reimbursed for such payments by the transfer of funds from the employees' compensation fund.

Approved September 7, 1916.

GREAT BRITAIN (ENGLISH ACT)

WORKMEN'S COMPENSATION ACT, 1906

Section

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 - b. Civil liability—Option of employer.
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- (3) Settlement of controversies.
- (4) Compensation in action for damages.
- (5) Fines.
2. (1) Notice and claim.
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- (2) Requisites of notice.
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SCHEDULE 1.—AMOUNT OF COMPENSATION AND PAYMENT

SCHEDULE 2.—ARBITRATION

SCHEDULE 3.—OCCUPATIONAL DISEASES

WORKMEN'S COMPENSATION ACT, 1906

(6 Edw. VII, c. 58.)

An Act to consolidate and amend the law with respect to Compensation to Workmen for Injuries suffered in the course of their Employment (21st, December, 1906).

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

§ 1. (1) Liability of employers.—If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule to this act.

(2) Provisos.—Provided that

(a) Two weeks disability.—The employer shall not be liable under this act in respect of any injury which does not disable the workman for a period of at least one week from earning full wages at the work at which he was employed.

(b) Civil liability—Option of employé.—When the injury was caused by the personal negligence or wilful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this act or take proceedings independently of this act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this act, except in case of such personal negligence or wilful act as aforesaid:

(c) Serious and wilful misconduct.—If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed.

(3) Settlement of controversies.—If any question arises in any proceedings under this act as to the liability to pay compensation under this act (including any question as to whether the person injured is a workman to whom this act applies), or as to the amount or duration of compensation under this act, the question, if not settled by agreement, shall, subject to the provisions of the first schedule to this act, be settled by arbitration, in accordance with the second schedule to this act.

(4) Compensation in action for damages.—If, within the time hereinafter in this act limited for taking proceedings, an action is brought to recover damages independently of this act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this act, the action shall be dismissed; but the court in which the action is tried, shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this act. In any proceed-

ing under this subsection, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this act.

(5) Fines.—Nothing in this act shall affect any proceeding for a fine under the enactments relating to mines, factories, or workshops, or the application of any such fine.

§ 2. (1) Notice and claim.—Proceedings for the recovery under this act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death:

Provided always that—

(a) Defect or inaccuracy.—The want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defense by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from the United Kingdom, or other reasonable cause; and

(b) Mistake or reasonable cause.—The failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.

(2) Requisites of notice.—Notice in respect of an injury under this act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3) Service.—The notice may be served by delivering the same at, or sending it by post in a registered letter addressed to, the residence or place of business of the person on whom it is to be served.

(4) Same—Body of persons.—Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to, the employer at the office, or, if there be more than one office, any one of the offices of such body.

§ 3. Contracting out—(1) Substitute schemes.—If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workman, certifies that any scheme of compensation, benefit, or insurance for the workman of an employer in any employment, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favorable to the workmen and their dependents than the corresponding scales contained in this act, and that, where the scheme provides for contributions by the workmen, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this act, and that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable, are in favor of such scheme, the employer may, whilst the certificate is in

force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this act shall apply notwithstanding any contract to the contrary made after the commencement of this act.

(2) **Certificate.**—The registrar may give a certificate to expire at the end of a limited period of not less than five years, and may from time to time renew with or without modifications such a certificate to expire at the end of the period for which it is renewed.

(3) **Obligations imposed by substitute scheme.**—No scheme shall be certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, or which does not contain provisions enabling a workman to withdraw from the scheme.

(4) **Revocation of certificate.**—If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen of any employer that the benefits conferred by any scheme no longer conform to the conditions stated in subsection (1) of this section, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the registrar shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5) **Same—Distribution of funds.**—When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6) **Inquiries and accounts.**—Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

(7) **Annual report.**—The Chief Registrar of Friendly Societies shall include in his annual report the particulars of the proceedings of the registrar under this act.

(8) **Regulations.**—The Chief Registrar of Friendly Societies may make regulations for the purpose of carrying this section into effect.

§ 4. **Subcontracting—(1) Principal and contractor.**—Where any person (in this section referred to as the principal), in the course of or for the purpose of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this act, references to the principal shall be substituted for the references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed:

Provided that, where the contract relates to threshing, plowing or other agricultural work, and the contractor provides and uses machinery driven by

mechanical power for the purpose of such work, he and he alone shall be liable under this act to pay compensation to any workman employed by him on such work.

(2) Subrogation.—Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section, and all questions as to the right to and amount of any such indemnity shall in default of agreement be settled by arbitration under this act.

(3) Alternative remedies.—Nothing in this section shall be construed as preventing a workman recovering compensation under this act from the contractor instead of the principal.

(4) Premises.—This section shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

§ 5. Bankruptcy of employer.—(1) Insurer liable.—Where any employer has entered into a contract with any insurers in respect of any liability under this act to any workman, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to bankruptcy and the winding up of companies, be transferred to and vest in the workmen, and upon any such transfers the insurer shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) Balance of compensation not covered by insurance.—If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the bankruptcy or liquidation.

(3) Compensation as bankruptcy debt—Preference.—There shall be included among the debts which under section one of the Preferential Payments in Bankruptcy Act, 1888, and section four of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, are in the distribution of the property of a bankrupt and in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount, not exceeding in any individual case one hundred pounds, due in respect of any compensation the liability whereof accrued before the date of the receiving order or the date of the commencement of the winding up, and those acts and the Preferential Payments in Bankruptcy Amendment Act, 1897, shall have effect accordingly. Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the first schedule to this act.

(4) Priority under Stannaries Act.—In the case of the winding up of a company within the meaning of the Stannaries Act, 1887, such an amount as aforesaid, if the compensation is payable to a miner or the dependents of a

miner, shall have a like priority as is conferred on wages of miners by section nine of that act, and that section shall have effect accordingly.

(5) Application—Contract.—The provisions of this section with respect to preferences and priorities shall not apply where the bankrupt or the company being wound up has entered into such a contract with insurers as aforesaid.

(6) Same—Reconstruction.—This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

§ 6. Liability for injury by third party.—Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

(1) Choice of remedies.—The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this act for such compensation, but shall not be entitled to recover both damages and compensation; and

(2) Indemnity.—If the workman has recovered compensation under this act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the section of this act relating to subcontracting shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action, or, by consent of the parties, by arbitration under this act.

§ 7. Application to seamen.—(1) Seamen included.—This act shall apply to masters, seamen, and apprentices to the sea service and apprentices in the sea fishing service, provided that such persons are workmen within the meaning of this act, and are members of the crew of any ship registered in the United Kingdom, or of any other British ship or vessel of which the owner, or (if there is more than one owner) the managing owner, or manager resides or has his principal place of business in the United Kingdom, subject to the following modifications:

(a) Notice and claim—Service—Necessity.—The notice of accident and the claim for compensation may, except where the person injured is the master, be served on the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident;

(b) Claim—Limitation period in case of death.—In the case of the death of the master, seaman, or apprentice, the claim for compensation shall be made within six months after news of the death has been received by the claimant;

(c) Depositions as evidence.—Where an injured master, seaman, or apprentice is discharged or left behind in a British possession, or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any judge or magistrate in the British possession, and by any British consular officer in the foreign country, and if so taken shall be transmitted by the person by whom they are taken to the Board of Trade, and such depositions or certified copies thereof shall in any proceedings for enforcing the claim be admissible in evidence as provided by sections six hundred and ninety-one and six hundred and ninety-five of the Merchant Shipping Act, 1894, and those sections shall apply accordingly;

(d) **Burial expenses.**—In the case of the death of a master, seaman, or apprentice, leaving no dependents, no compensation shall be payable, if the owner of the ship is under the Merchant Shipping Act, 1894, liable to pay the expenses of burial;

(e) **Suspension of payments.**—The weekly payment shall not be payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or otherwise, liable to defray the expenses of maintenance of the injured master, seaman, or apprentice;

(f) **Limit to liability.**—Any sum payable by way of compensation by the owner of a ship under this act shall be paid in full notwithstanding anything in section five hundred and three of the Merchant Shipping Act, 1894 (which relates to the limitations of a shipowner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity under the section of this act relating to remedies both against employer and stranger, as if the indemnity were damages for loss of life or personal injury;

(g) **Deemed to be lost.**—Subsections (2) and (3) of section one hundred and seventy-four of the Merchant Shipping Act, 1894 (which relates to the recovery of wages of seamen lost with their ship), shall apply as respects proceedings for the recovery of compensation by dependents of masters, seamen, and apprentices lost with their ships as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands;

(2) **Sharers in profits.**—This act shall not apply to such members of the crew of a fishing vessel as are remunerated by shares in the profits or the gross earnings of the working of such vessel.

(3) **Pilots.**—This section shall extend to pilots to whom Part X of the Merchant Shipping Act, 1894, applies, as if a pilot when employed on any such ship as aforesaid were a seaman and a member of the crew.

§ 8. Industrial diseases.—(1) Same as injury.—Where—

(1) The certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district in which a workman is employed certifies that the workman is suffering from a disease mentioned in the third schedule to this act and is thereby disabled from earning full wages at the work at which he was employed; or

(2) A workman is, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of having contracted any such disease; or

(3) The death of a workman is caused by any such disease and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement or suspension, whether under one or more employers, he or his dependents shall be entitled to compensation under this act as if the disease or such suspension as aforesaid were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications:

(a) **Date of accident.**—The disablement or suspension shall be treated as the happening of the accident;

(b) **False statement as to susceptibility.**—If it is proved that the workman has at the time of entering the employment wilfully and falsely represented himself in writing as not having previously suffered from the disease, compensation shall not be payable;

(c) **Which employer liable.**—The compensation shall be recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due;

Provided that—

(i) **Information as to prior employers.**—The workman or his dependents if so required shall furnish that employer with such information as to the names and addresses of all other employers who employed him in the employment during the said twelve months as he or they may possess, and, if such information is not furnished, or is not sufficient to enable that employer to take proceedings under the next following proviso, that employer upon proving that the disease was not contracted whilst the workman was in his employment shall not be liable to pay compensation; and

(ii) **Joinder of parties.**—If that employer alleges that the disease was in fact contracted whilst the workman was in the employment of some other employer, and not whilst in his employment, he may join such other employer as a party to the arbitration, and if the allegation is proved that other employer shall be the employer from whom the compensation is to be recoverable; and

(iii) **Gradual process.**—If the disease is of such a nature as to be contracted by a gradual process, any other employers, who during the said twelve months employed the workman in the employment to the nature of which the disease was due, shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in the arbitration under this act for settling the amount of the compensation;

(d) **Computation of earnings.**—The amount of the compensation shall be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable;

(e) **Notice—To whom.**—The employer to whom notice of the death, disablement, or suspension is to be given shall be the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due, and the notice may be given notwithstanding that the workman has voluntarily left his employment.

(f) **Appeal to medical referee.**—If an employer or a workman is aggrieved by the action of a certifying or other surgeon in giving or refusing to give a certificate of disablement or in suspending or refusing to suspend a workman for the purposes of this section, the matter shall in accordance with regulations made by the Secretary of State be referred to a medical referee, whose decision shall be final.

(2) **Presumed due to the employment.**—If the workman at or immediately before the date of the disablement or suspension was employed in any process mentioned in the second column of the third schedule to this act, and the disease contracted is the disease in the first column of that schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary.

(3) Duties and fees of surgeons.—The Secretary of State may make rules regulating the duties and fees of certifying and other surgeons (including dentists) under this section.

(4) Date of disablement.—For the purposes of this section the date of disablement shall be such date as the certifying surgeon certifies as the date on which the disablement commenced, or, if he is unable to certify such a date, the date on which the certificate is given. Provided that—

(a) Where the medical referee allows an appeal against a refusal by a certifying surgeon to give a certificate of disablement, the date of disablement shall be such date as the medical referee may determine;

(b) Where a workman dies without having obtained a certificate of disablement or is at the time of death not in receipt of a weekly payment on account of disablement, it shall be the date of death.

(5) Medical practitioner.—In such cases, and subject to such conditions as the Secretary of State may direct, a medical practitioner appointed by the Secretary of State for the purpose shall have the powers and duties of a certifying surgeon under this section, and this section shall be construed accordingly.

(6) Extension to other diseases.—The Secretary of State may make orders for extending the provisions of this section to other diseases and other processes, and to injuries due to the nature of any employment specified in the order not being injuries by accident, either without modification or subject to such modification as may be contained in the order.

(7) Compulsory insurance.—Where, after inquiry held on the application of any employers or workman engaged in any industry to which this section applies, it appears that a mutual trade insurance company or society for insuring against the risks under this section has been established for the industry, and that a majority of the employers engaged in that industry are insured against such risks in the company or society and that the company or society consents, the Secretary of State may, by provisional order, require all employers in that industry to insure in the company or society upon such terms and under such conditions and subject to such exceptions as may be set forth in the order. Where such a company or society has been established, but is confined to employers in any particular locality or of any particular class, the Secretary of State may for the purposes of this provision treat the industry, as carried on by employers in that locality or of that class, as a separate industry.

(8) Provisional order—Approval.—A provisional order made under this section shall be of no force whatever unless and until it is confirmed by Parliament, and if, while the bill confirming any such order is pending in either House of Parliament, a petition is presented against the order, the bill may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills, and any act confirming any provisional order under this section may be repealed, altered or amended by a provisional order made and confirmed in like manner.

(9) Expenses.—Any expenses incurred by the Secretary of State in respect of any such order, provisional order, or confirming bill shall be defrayed out of moneys provided by Parliament.

(10) Other diseases.—Nothing in this section shall affect the rights of a workman to recover compensation in respect of a disease to which this sec-

tion does not apply, if the disease is a personal injury by accident within the meaning of this act.

§ 9. Employés of the crown—(1) Application—To whom.—This act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to workmen employed by or under the Crown to whom this act would apply if the employer were a private person:

Provided that in the case of a person employed in the private service of the Crown, the head of that department of the royal household in which he was employed at the time of the accident shall be deemed to be his employer.

(2) Warrant of treasury.—The treasury may, by warrant laid before Parliament, modify for the purposes of this act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that act, or any such warrant, may frame schemes with a view to their being certified by the Registrar of Friendly Societies under this act.

§ 10. Appointment and remuneration of referees and arbitrators.—

(1) The Secretary of State may appoint such legally qualified medical practitioners to be medical referees for the purposes of this act as he may, with the sanction of the treasury, determine, and remuneration of, and other expenses incurred by, medical referees under this act shall, subject to regulations made by the treasury, be paid out of moneys provided by Parliament.

Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurers interested he shall not act as medical referee in that case.

(2) The remuneration of an arbitrator appointed by a judge of the county courts under the second schedule to this act shall be paid out of moneys provided by Parliament in accordance with regulations made by the treasury.

§ 11. Detention of ships.—(1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this act, and at any time that ship is found in any port or river of England or Ireland, or within three miles of the coast thereof, a judge of any court of record in England or Ireland may, upon its being shown to him by any person applying in accordance with the rules of the court that the owners are probably liable as such to pay such compensation, and that none of the owners reside in the United Kingdom, issue an order directed to any officer of customs or other officer named by the judge, requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

(2) In any legal proceeding to recover such compensation, the person giving security shall be made the defendant and the production of the order of the judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.

(3) Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this act as it applies to the detention of a ship under that act, and, if the owner of a ship is a corporation, it shall for the purposes of this section be deemed to reside in the United Kingdom if it has an office in the United Kingdom at which service of writs can be effected.

§ 12. Return as to compensation.—(1) Every employer in any industry to which the Secretary of State may direct that this section shall apply shall, on or before such day in every year as the Secretary of State may direct, send to the Secretary of State a correct return specifying the number of injuries in respect of which compensation has been paid by him under this act during the previous year, and the amount of such compensation, together with such other particulars as to the compensation as the Secretary of State may direct, and in default of complying with this section shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds.

(2) Any regulations made by the Secretary of State containing such directions as aforesaid shall be laid before both Houses of Parliament as soon as may be after they are made.

§ 13. Definitions.—In this act, unless the context otherwise requires, "Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this act, be deemed to continue to be the employer of the workman whilst he is working for that other person;

"Workman" does not include any person employed otherwise than by way of manual labor whose remuneration exceeds two hundred and fifty pounds a year, or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, or a member of a police force, or an outworker, or a member of the employer's family dwelling in his house, but save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labor, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing;

Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependents or other persons to whom or for whose benefit compensation is payable;

"Dependents" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively;

"Member of a family" means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister;

"Ship," "vessel," "seamen," and "port" have the same meanings as in the Merchant Shipping Act, 1894;

"Manager," in relation to a ship, means the ship's husband or other person to whom the management of the ship is intrusted by or on behalf of the owner;

"Police force" means a police force to which the Police Act, 1890, or the Police (Scotland) Act 1890, applies, The City of London Police Force, The Royal Irish Constabulary, and "The Dublin Metropolitan Police Force"

"Outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale, in his own home or on other premises not under the control or management of the person who gave out the materials or articles.

The exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this act, be treated as the trade or business of the authority;

"County Court," "Judge of the county court," "registrar of the county court," "plaintiffs," and "rules of court," as respects Scotland, mean respectively sheriff court, sheriff, sheriff clerk, pursuer, and act of sederunt.

§ 14. **Special provisions as to Scotland.**—In Scotland, where a workman raises an action against his employer independently of this act in respect to any injury caused by accident arising out of and in the course of the employment, the action, if raised in the sheriff court and concluding for damages under the Employers' Liability Act, 1890, or alternatively at common law or under the Employers' Liability Act, 1880, shall, notwithstanding anything contained in that act, not be removed under that act or otherwise to the Court of Session, nor shall it be appealed to that court otherwise than by appeal on a question of law; and for the purposes of such appeal the provisions of the second schedule to this act in regard to an appeal from the decision of the sheriff on any question of law determined by him as arbitrator under this act shall apply.

§ 15. **Existing contracts and schemes.**—(1) Any contract (other than a contract substituting the provisions of a scheme certified under the Workmen's Compensation Act, 1897, for the provisions of that act) existing at the commencement of this act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this act.

(2) Every scheme under the Workmen's Compensation Act, 1897, in force at the commencement of this act shall, if re-certified by the Registrar of Friendly Societies, have effect as if it were a scheme under this act.

(3) The registrar shall re-certify any such scheme if it is proved to his satisfaction that the scheme conforms, or has been so modified as to conform, with the provisions of this act as to schemes.

(4) If any such scheme has not been so re-certified before the expiration of six months from the commencement of this act, the certificate thereof shall be revoked.

§ 16. **Commencement and repeal.**—(1) This act shall come into operation on the first day of July nineteen hundred and seven, but, except so far as it relates to references to medical referees, and proceedings consequential thereon, shall not apply in any case where the accident happened before the commencement of this act.

(2) The Workman's Compensation Acts, 1897, and 1900, are hereby repealed, but shall continue to apply to cases where the accident happened be-

fore the commencement of this act, except to the extent to which this act applies to those cases.

§ 17. **Short title.**—This act may be cited as the Workmen's Compensation Act, 1906.

SCHEDULES

SCHEDULE 1.—AMOUNT OF COMPENSATION AND PAYMENT

Scale and conditions of compensation.—(1) The amount of compensation under this Act shall be

(a) Where death results from the injury—

(i) If the workman leaves any dependents wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof, shall be deducted from such sum, and, if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer;

(ii) If the workman does not leave any such dependents, but leaves any dependents in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependents; and

(iii) If he leaves no dependents, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds;

(b) Where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound:

Provided that—

(a) If the incapacity lasts less than two weeks no compensation shall be payable in respect of the first week; and

(b) As respects the weekly payments during total incapacity of a workman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than twenty shillings, one hundred per cent. shall be substituted for fifty per cent. of his average weekly earnings, but the weekly payment shall in no case exceed ten shillings.

(2) For the purposes of the provisions of this schedule relating to "earnings" and "average weekly earnings" of a workman, the following rules shall be observed:

(a) Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the

casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district;

(b) Where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident;

(c) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause;

(d) Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.

(3) In fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the workman may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

(4) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and, if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation, shall be suspended until such examination has taken place.

(5) The payment in the case of death shall, unless otherwise ordered as hereinafter provided, be paid into the county court, and any sum so paid into court shall, subject to rules of court and the provisions of this schedule, be invested, applied, or otherwise dealt with by the court in such manner as the court in its discretion thinks fit for the benefit of the persons entitled thereto under this Act, and the receipt of the registrar of the court shall be a sufficient discharge in respect of the amount paid in:

Provided that, if so agreed, the payment in case of death shall, if the workman leaves no dependents, be made to his legal personal representative, or, if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

(6) Rules of court may provide for the transfer of money paid into court under this Act from one court to another, whether or not the court from

which it is to be transferred is in the same part of the United Kingdom as the court to which it is to be transferred.

(7) Where a weekly payment is payable under this Act to a person under any legal disability, a county court may, on application being made in accordance with rules of court, order that the weekly payment be paid during the disability into court, and the provisions of this schedule with respect to sums required by this schedule to be paid into court shall apply to sums paid into court in pursuance of any such order.

(8) Any question as to who is a dependent shall, in default of agreement, be settled by arbitration under this Act, or, if not so settled before payment into court under this schedule, shall be settled by the county court, and the amount payable to each dependent shall be settled by arbitration under this Act, or, if not so settled before payment into court under this schedule, shall be settled by the county court, and the amount payable to each dependent shall be settled by arbitration under this Act, or, if not so settled before payment into court under this schedule, by the county court. Where there are both total and partial dependents nothing in this schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependents.

(9) Where, on application being made in accordance with rules of court, it appears to a county court that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependents, or for any other sufficient cause, an order of the court or an award as to the apportionment amongst the several dependents of any sum paid as compensation, or as to the manner in which any sum payable to any such dependent is to be invested, applied, or otherwise dealt with, ought to be varied, the Court may make such order for the variation of the former order or the award, as in the circumstances of the case the court may think just.

(10) Any sum which under this schedule is ordered to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

(11) Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Postmaster-General as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings bank, and the declaration to be made by a depositor, shall not apply to such sums.

(12) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this Act shall be paid out, except upon authority addressed to the Postmaster-General by the Treasury or, subject to regulations of the Treasury, by the judge or registrar of the county court.

(13) Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this Act, may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

(14) Any workman receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(15) A workman shall not be required to submit himself for examination by a medical practitioner under paragraph (4) or paragraph (14) of this schedule otherwise than in accordance with regulations made by the Secretary of State, or at more frequent intervals than may be prescribed by those regulations.

Where a workman has so submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the registrar of a county court, on application being made to the court by both parties, may, on payment by the applicants of such fee not exceeding one pound as may be prescribed, refer the matter to a medical referee.

The medical referee to whom the matter is so referred shall, in accordance with regulations made by the Secretary of State, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this paragraph shall, subject to any regulations made by the Secretary of State, apply as if the question were a question as to the condition of the workman.

If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this Act in relation to compensation, or, in the case of a workman in receipt of a weekly payment, his right to that weekly payment, shall be suspended until such examination has taken place.

Rules of court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this paragraph and the forms to be used for those purposes and, subject to the consent of the Treasury, as to the fee to be paid under this paragraph.

(16) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act:

Provided that where the workman was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per cent. of the weekly sum which the workman

would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding one pound.

(17) Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank, purchase an annuity for the workman equal to seventy-five per cent. of the annual value of the weekly payment, and as in any other case may be settled by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator or judge of the county court to be invested or otherwise applied for the benefit of the person entitled thereto: Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

(18) If a workman receiving a weekly payment ceases to reside in the United Kingdom, he shall thereupon cease to be entitled to receive any weekly payment, unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the workman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as may be prescribed by rules of court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

(19) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

(20) Where under this Schedule a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

(21) Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of the proviso to the first subsection of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme.

(22) In the application of this Act to Ireland the provisions of the County Officers and Courts (Ireland) Act, 1877, with respect to money deposited in the Post Office Savings Bank under this Act shall apply to money invested in the Post Office Savings Bank under this Act.

SCHEDULE 2.—ARBITRATION

(1) For the purpose of settling any matter which under this Act is to be settled by arbitration, if any committee, representative of an employer and his workmen, exists with power to settle matters under this act in the case of the employer and workmen, the matter shall, unless either party objects by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

(2) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within six months from the date of the claim, the matter shall be settled by a single arbitrator

agreed on by the parties, or in the absence of agreement by the judge of the county court, according to the procedure prescribed by rules of court.

(3) In England the matter, instead of being settled by the judge of the county court, may, if the Lord Chancellor so authorizes, be settled according to the like procedure, by a single arbitrator appointed by that judge, and the arbitrator so appointed shall, for the purposes of this Act, have all the powers of that judge.

(4) The Arbitration Act, 1889, shall not apply to any arbitration under this Act; but a committee or an arbitrator may, if they or he think fit, submit any question of law for the decision of the judge of the county court, and the decision of the judge on any question of law, either on such submission, or in any case where he himself settled the matter under this Act, or where he gives any decision or makes any order under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal; and the judge of the county court, or the arbitrator appointed by him, shall, for the purpose of proceedings under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings were an action in the county court.

(5) A judge of county courts may, if he thinks fit, summon a medical referee to sit with him as an assessor.

(6) Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person.

(7) The costs of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of the committee, arbitrator, or judge of the county court, subject as respects such judge and an arbitrator appointed by him to rules of court. The costs, whether before a committee or an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules, and such taxation may be reviewed by the judge of the county court.

(8) In the case of the death, or refusal or inability to act, of an arbitrator, the judge of the county court may, on the application of any party, appoint a new arbitrator.

(9) Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the committee or arbitrator, or by any party interested, to the registrar of the county court who shall subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a county court judgment.

Provided that—

(a) No such memorandum shall be recorded before seven days after the despatch by the registrar of notice to the parties interested; and

(b) Where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act and the employer, in accordance with rules of court, proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the judge of the county court, under the circumstances, may think just; and

(c) The judge of the county court may at any time rectify the register; and

(d) Where it appears to the registrar of the county court, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependents, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the judge who shall, in accordance with rules of court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just; and

(e) The judge may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependents, has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just.

(10) An agreement as to the redemption of a weekly payment by a lump sum if not registered in accordance with this Act shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependents, if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.

(11) Where any matter under this Act is to be done in a county court, or by, to, or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by, to, or before the judge or registrar of, the county court of the district in which all the parties concerned reside, or if they reside in different districts the district prescribed by rules of court, without prejudice to any transfer in manner provided by rules of court.

(12) The duty of a judge of county courts under this Act, or in England of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this Act authorizes rules of court to be made, and also generally for carrying into effect this Act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or be for any such arbitrator, and such rules may, in England, be made by the five judges of county courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the Lord Chancellor, as provided by that section, shall have full effect without any further consent.

(13) No court fee, except such as may be prescribed under paragraph (15) of the First Schedule to this Act, shall be payable by any party in respect of

any proceedings by or against a workman under this Act in the court prior to the award.

(14) Any sum awarded as compensation shall, unless paid into court under this Act, be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by the committee, the arbitrator, or the judge of the county court, on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

(15) Any committee, arbitrator, or judge may, subject to regulations made by the Secretary of State and the Treasury, submit to a medical referee for report any matter which seems material to any question arising in the arbitration.

(16) The Secretary of State may, by order, either unconditionally or subject to such conditions or modifications as he may think fit, confer on any committee representative of an employer and his workmen, as respects any matter in which the committee act as arbitrators, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this Act exclusively on county courts or judges of county courts, and may by the order provide how and to whom the compensation money is to be paid in cases where, but for the order, the money would be required to be paid into court, and the order may exclude from the operation of provisions (d) and (e) of paragraph (9) of this Schedule agreements submitted to and approved by the committee, and may contain such incidental, consequential, or supplemental provisions as may appear to the Secretary of State to be necessary or proper for the purposes of the order.

(17) In the application of this Schedule to Scotland—

(a) "County court judgment" as used in paragraph (9) of this Schedule means a recorded decree arbitral:

(b) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by section fifty-two of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorized in writing to appear for them and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and determine the same and remit to the sheriff with instruction as to the judgment to be pronounced, and an appeal shall lie from either of such divisions to the House of Lords:

(c) Paragraphs (3), (4), and (8) shall not apply.

(18) In the application of this Schedule to Ireland the expression "judge of the county court" shall include the recorder of any city or town, and an appeal shall lie from the Court of Appeal to the House of Lords.

SCHEDULE 3.—OCCUPATIONAL DISEASES

Description of Disease.	Description of Process.
Anthrax.	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelæ.	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelæ.	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelæ.	Any process involving the use of phosphorus or its preparations or compounds.
Arsenic poisoning or its sequelæ.	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis.	Mining.

Where regulations or special rules made under any Act of Parliament for the protection of persons employed in any industry against the risk of contracting lead poisoning require some or all of the persons employed in certain processes specified in the regulations or special rules to be periodically examined by a certifying or other surgeon, then, in the application of this Schedule to that industry, the expression "process" shall, unless the Secretary of State otherwise directs, include only the process so specified.

GERMANY

(SYNOPSIS OF GERMAN ACT)

Date enacted.—Code July 19, 1911, effective January 1, 1913, replaced previous laws (original Act of July 6, 1884, supplemented by Acts of May 28, 1885, May 5, 1886, July 11, 1887, and July 13, 1887; codification enacted June 30, 1900).

Injuries compensated.—The injuries which may be compensated are injuries caused by accident in the course of employment and causing death or disability for more than three days, except where caused intentionally by the injured workman or his survivors. Compensation may be refused or reduced where the injury was received while the workman was committing an illegal act.

Industries covered.—Mining, salt works, quarrying and related industries, factories, manufacture of explosives, production or distribution of electric power, shipyards, smelting works, building trades, breweries, pharmacies, tanneries, bathing establishments, chimney sweeping, window cleaning, butchering, fish culture, ice cutting, transportation, expressing, hauling, storage, agriculture, forestry and fisheries.

Persons entitled to compensation.—Workmen and apprentices and establishment officials earning annually less than five thousand marks (\$1,190). The law may be extended to other classes with the approval of the Federal Council.

Government employés.—Government employés in the postal, telegraph and railway services, and in industrial enterprises of the Army and Navy, are covered by the Act, unless otherwise provided for.

Burden of paying benefits.—Medical and surgical treatment for 91 days and benefit payments from beginning of fourth to ninety-first day are provided by sick-benefit funds, to which employers contribute one-third and employés two-thirds; from beginning of twenty-ninth to ninety-first day payments are increased by one-third at expense of employer in whose establishment accident occurred; after ninety-first day, and in case of death from injuries, expense is borne by employers' associations supported by contributions of employers.

Compensation for death.—(a) Funeral benefits of one-fifteenth of annual earnings of deceased, but not less than 50 marks (\$11.90).

(b) Pensions to dependent heirs not exceeding 60 per cent. of annual earnings of the deceased, as follows: Widow, 20 per cent. of annual earnings until death or remarriage; in latter case, a final sum equal to three annual payments; dependent widower, 20 per cent. of annual earnings; each child, 15 years of age or under, 20 per cent.; payments to consort and to children to be reduced proportionately if the total would exceed 60 per cent.; dependent heirs in ascending line, 20 per cent. or less, if there is a residue after providing for above heirs; orphan grandchildren, 20 per cent. or less, if there is a residue after providing for above heirs.

(c) If annual earnings exceed 1,800 marks (\$428.40), only one-third of excess is considered in computing pensions.

Compensation for disability.—(a) Free medical and surgical treatment paid first 13 weeks by sick benefit funds and afterwards by employers' associations.

(b) For temporary or permanent total disability, 50 per cent. of daily wages of persons similarly employed, but not exceeding 3 marks (71 cents), paid by sick benefit funds from beginning of fourth day to end of fourth week; from fifth to end of thirteenth week, above allowance by sick benefit fund, plus 16½ per cent. contributed by employer direct; after 13 weeks, 66⅔ per cent. of average annual earnings of injured person, paid by employers' associations.

(c) For complete helplessness, necessitating attendance, payments may be increased to 100 per cent. of annual earnings.

(d) For partial disability, a corresponding reduction in payments.

(e) If annual earnings exceed 1,800 marks (\$428.40), only one-third of excess is considered in computing pensions.

Payments revised when.—Whenever a change occurs in the injured person's condition, benefits may be revised.

Insurance.—Payments are met by mutual insurance associations of employers, in which it is required that all employés be insured at the expense of employers. Separate associations have been organized for each industry.

Security of payments.—The state guarantees the solvency of employers' associations.

Settlement of controversies.—Controversies are settled by the "superior insurance officers," composed of government officials and an equal number of representatives of employers and employés.

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